

6/14/93



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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
MICHIGAN EASTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
CHRYSLER CORPORATION,
CITY OF BATTLE CREEK, CITY OF DETROIT,
CONSUMERS POWER COMPANY,
DETROIT DIESEL CORPORATION,
DETROIT EDISON COMPANY,
EDWARD C. LEVY COMPANY,
FORD MOTOR COMPANY,
GENERAL MOTORS CORPORATION,
KELSEY-HAYES COMPANY,
LEAR SIEGLER DIVERSIFIED HOLDINGS CORP.,
ROUGE STEEL COMPANY,
SHAW ELECTRIC COMPANY,
and VOLKSWAGEN OF AMERICA,
Defendants. ++EP++

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CARTER
INDUSTRIALS CERCLA RD/RA CONSENT DECREE

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1. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. Sub-Section 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred for response actions at the Carter Industrials Superfund Site ("Site") in Detroit, Michigan, together with accrued interest; and (2) performance of studies and response work by the Defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"). ++EP++

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C. In accordance with the NCP and Section 121(f) (1) (F) of CERCLA, 42 U.S.C. Section 9621(f) (1) (F), EPA notified the State of Michigan (the "State") on November 18, 1991 of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j) (1) of CERCLA, 42 U.S.C. Section 9622 (j) (1), EPA notified the United States Department of the Interior on November 18, 1991 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

E. The Defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. Section 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on March 31, 1989, 54 Fed. Reg. 13296; ++EP++

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G. In response to releases or substantial threats of releases of hazardous substances at or from the Site, EPA commenced in December 1986 an Engineering Evaluation/Cost Analysis ("EECA") for the Site in accordance with U.S. EPA guidance.

H. EPA completed a Feasibility Study ("FS") Report on April 18, 1991.

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. Section 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on April 18, 1991, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

J. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on September 18, 1991, on which the State has given its concurrence. The ROD includes EPA's explanation of significant changes between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA. ++EP++

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K. Based on the information available to EPA at present, EPA

believes that the Defendants' Work will be properly and promptly conducted by the Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

L. For the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President.

M. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. Sub-Section 1331 and 1345, and 42 U.S.C. Sub-Section 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. ++EP++

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III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Defendants' Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Defendants' Work and shall condition all contracts entered into hereunder upon performance of the Defendants' Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Defendants' Work required by this

Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Defendants' Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. Section 9607(b) (3). ++EP++

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IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Sub-Section 9601 et seq.

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXX). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Costs of Non-Party Enforcement" shall mean enforcement costs incurred by the United States in any action against a non-party to this Consent Decree to recover the United States' Past Response Costs, Future Response Costs, or the costs of EPA Work, if, in its non-reviewable exercise of prosecutorial discretion, the United States files such an action.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day. ++EP++

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"Defendants' Work" shall mean all Work except EPA Work and except activities required by Section XXVI (Retention of Records).

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"EPA Work" shall mean Task V in the Statement of Work, together with EPA oversight activities, including reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Defendants' Work, or otherwise overseeing Defendants' Work.

"Future Response Costs" shall mean: (1) the costs incurred pursuant to Sections VII, VIII, XVI, and Paragraph 82 of Section XXII; (2) all costs, including direct and indirect costs, incurred by the United States in connection with the Site between February 29, 1992 and the effective date of this Consent Decree, except costs associated with EPA Work; (3) interest on \$2,781,225.19 accruing from March 27, 1992 through and including the date of payment of the Past Response Costs; and (4) the Costs of Non-Party Enforcement, if any.

"Major Milestone" shall mean a date designated as such in an approved schedule for work to be performed under this Decree. ++EP++

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"MDNR" shall mean the Michigan Department of Natural Resources and any successor departments or agencies of the State.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. Section 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work (SOW).

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States and the Settling Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs that the United States incurred with regard to the Site prior to February 29, 1992, and interest on such costs from June 13, 1990 or from the date on which such costs were incurred, whichever is later, through and including March 27, 1992.

"Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations set forth in the ROD or Sections III and IV of the SOW.

++EP++

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"Plaintiff" shall mean the United States.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. Sub-Section 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Source Control Operable Unit at the Carter Industrials Site signed on September 18, 1991, by the Regional Administrator, EPA Region V, and all attachments thereto.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendants to implement the final plans and specifications submitted by the Settling Defendants pursuant to the Remedial Design/Remedial Action Work Plan and approved by EPA.

"Remedial Design/Remedial Action Work Plan" or "RD/RA Work Plan" shall mean the document submitted by the Settling Defendants pursuant to Paragraph 10.a of this Consent Decree and described more fully in Paragraph 10.b.

"Remedial Design" shall mean those activities to be undertaken by the Settling Defendants to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design/Remedial Action Work Plan.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Settling Defendants" shall mean those Parties identified in Appendix E (Settling Defendants). ++EP++

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"Site" shall mean the Carter Industrials Superfund site, encompassing approximately 4 acres, located at 4690 Humboldt Street in Detroit, Wayne County, Michigan and depicted generally on the map attached as Appendix C. For the purpose of determining whether any federal, state, or local permit is required for a response action conducted pursuant to this Decree, the term "on-site" shall mean the areal extent of contamination, and all suitable areas in very close proximity to the contamination that are necessary for implementation of the response action.

"State" shall mean the State of Michigan.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor

retained by the Settling Defendants to supervise and direct the implementation of Defendants' Work under this Consent Decree.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. Section 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. Section 6903(27). ++EP++

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"Work" shall mean the performance of the Remedial Design and Remedial Action for the Site, as set forth in the ROD (Appendix A), the Statement of Work (Appendix B), the approved RD/RA Work Plan (Appendix D), and other plans approved pursuant to Section VI below, and all other activities required under this Consent Decree, except those required by Section XXVI (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Defendants and to reimburse response costs of the Plaintiff.

6. Commitments by Settling Defendants

a. Settling Defendants shall finance and perform the Defendants' Work in accordance with this Consent Decree and all plans, standards, specifications, and schedules set forth in or developed and approved by EPA pursuant to this Consent Decree. Settling Defendants shall also reimburse the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree.

b. The obligations of Settling Defendants to finance and perform the Defendants' Work and to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendants shall complete all such requirements. ++EP++

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7. Compliance With Applicable Law

All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling

Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD and the SOW. The United States and the Settling Defendants agree that the activities conducted pursuant to this Consent Decree, if not disapproved by EPA, shall be considered to be consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA and Section 300.5 of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site. Where any portion of the Defendants' Work requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendants may seek relief under the provisions of Section XIX (Force Majeure) of this Consent Decree for any delay in the performance of the Defendants' Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Defendants' Work.

++EP++

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c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF DEFENDANTS' WORK BY SETTLING DEFENDANTS

9. Selection of Architect/engineer/consultant and RA Contractor.

a. Architect/engineer/consultant. All remedial design Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Defendants' Work by Settling Defendants), VII (Additional Response Actions), VIII (U.S. EPA Periodic Review), and IX (Quality Assurance, Sampling and Data Analysis) of this Consent Decree shall be under the direction and supervision of a qualified professional architect, engineer, or consultant. Within 20 days after the lodging of this Consent Decree, Settling Defendants shall notify EPA and the State, in writing, of the name, title, and qualifications of the proposed architect, engineer, or consultant to be used for all remedial design Work to be performed pursuant to this Consent Decree. Selection of any such architect, engineer, or consultant shall be subject to approval by EPA, in consultation with MDNR.

b. Remedial Action Contractor. All remedial action Work to be performed by the Settling Defendants pursuant to this Consent Decree shall be under the direction and supervision of a Supervising Contractor. As soon as possible after entry of this Consent Decree,

and at least 30 days prior to the date upon which initiation of remedial action Work is required under this Decree, the Settling Defendants shall notify U.S. EPA and the State, in writing, of the name, title, and qualifications of the proposed Supervising Contractor, and the names of principal contractors and subcontractors proposed to be used in carrying out the Defendants' Work to be performed pursuant to this Consent Decree. ++EP++

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Selection of any such Supervising Contractor, contractor and/or subcontractor shall be subject to approval by U.S. EPA, in consultation with the MDNR.

c. Approval/Disapproval of Architect/engineer/consultant or Contractor. If EPA approves of the proposed architect/engineer/consultant or contractor, EPA will issue an authorization to proceed. If EPA disapproves of the initial or subsequent selection of an architect/engineer/consultant or contractor, EPA will issue a notice of disapproval. Settling Defendants shall then submit to EPA a list of architects/engineers/consultants or contractors, including the qualifications of each architect/engineer/consultant or contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the architect/engineer/consultant or contractor previously selected. EPA will provide written notice of the names of any architect/engineer/consultant or contractor that it disapproves and an authorization to proceed with respect to any of the other architects/engineers/consultants or contractors. Settling Defendants may select any architect/engineer/consultant or contractor from that list that is not disapproved and shall notify EPA of the name of the architect/engineer/consultant or contractor selected within 21 days of EPA's authorization to proceed. ++EP++

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d. If at any time thereafter, Settling Defendants propose to change an architect/engineer/consultant or contractor previously approved by EPA, Settling Defendants shall give such notice to EPA and the State and must obtain an authorization to proceed from EPA before the new architect/engineer/consultant or contractor performs, directs, or supervises any Defendants' Work under this Consent Decree.

e. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines in

a plan approved by the EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XIX (Force Majeure) hereof.

10. Remedial Design.

a. Within 60 days after the lodging of this Decree, Settling Defendants shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site ("Remedial Design/Remedial Action Work Plan or RD/RA Work Plan"). The RD/RA Work Plan shall provide for design of the remedy set forth in the ROD in accordance with the SOW and, upon its approval by EPA, shall be incorporated into and become enforceable under this Consent Decree. ++EP++

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b. The RD/RA Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including but not limited to: (1) predesign work plan (including, but not limited to, a sampling and analysis plan and a Remedial Design Quality Assurance Project Plan (RD QAPP) in accordance with Section IX (Quality Assurance, Sampling and Data Analysis)); (2) Site Safety Plan for Pre-design activities; (3) a plan for complying with all applicable or relevant and appropriate requirements (ARARs); (4) a plan for conducting all necessary treatability studies; (5) a plan for obtaining all permits necessary to implement the remedial action; (6) a preliminary design submittal; (7) an intermediate design submittal; (8) a pre-final/final design submittal; and (9) a Construction Quality Assurance Project Plan (CQAPP or CQA plan).

c. Upon approval of the RD/RA Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Settling Defendants shall implement the RD/RA Work Plan. The Settling Defendants shall submit to EPA and the State all plans, submittals and other deliverables required under the approved RD/RA Work Plan in accordance with the approved schedule for review and approval pursuant to Section XII (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, Settling Defendants shall not commence further Remedial Design activities at the Site prior to approval of the RD/RA Work Plan.

++EP++

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d. The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of treatability studies; (3) results of additional field sampling and pre-design work;

(4) project delivery strategy; (5) preliminary plans, drawings and sketches; (6) required specifications in outline form; and (7) preliminary construction schedule.

e. The intermediate design submittal shall contain the initial drafts of the O&M Plan and Site Safety and Contingency Plan for remedial activities and shall be a continuation and expansion of the preliminary design. Any value engineering proposals must be identified and evaluated during this review.

f. The pre-final/final design submittal shall include, at a minimum, the following: (1) Final plans and specifications; (2) Final Operation and Maintenance Plan; (3) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); (4) Final Site Safety and Contingency Plan for RD/RA; (5) Remedial Action Project Schedule; and (6) Cost Estimate.

g. The CQA plan shall be a facility-specific document which details the approach to quality assurance during construction activities at the site. At a minimum, the CQA plan shall include: (1) the identity, responsibility and authority of all organizations including, but not limited to, the Project Coordinator, Remedial Design architect/engineer/consultant, Remedial Action contractor, Independent Quality Assurance Team, and key personnel involved in the implementation of the remedial action; ++EP++

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(2) name and qualifications of a CQA officer and the necessary supporting inspection staff in sufficient detail to demonstrate that they possess the training and experience necessary to fulfill their identified responsibilities; (3) the name and qualifications of the Independent Quality Assurance Team (IQAT), which (a) is used to provide confidence to the Settling Defendants that the selected remedy is constructed to meet project requirements, (b) implements the Construction Quality Assurance Plan by selectively testing and inspecting the work of the Remedial Action Contractor, and (c) is required to be "independent" and autonomous from the Remedial Action Contractor and may come from within the ranks of any Settling Defendants' staff, the Remedial Design Professional organization, or through a separate contractual relationship with a private consulting entity; (4) summaries of all observations and tests that will be used to monitor the construction and/or installation of the components of the Remedial Actions; (5) the scope and frequency of each type of inspection; (6) Control Testing procedures for each specific test, including information which authenticates that personnel and

laboratories performing the tests are qualified and the equipment and procedures to be used complies with applicable standards; (7) pre-construction, pre-final and final and final inspections which shall verify compliance with environmental requirements and include, but not be limited to, air quality and emissions monitoring records, Waste Material/waste disposal records (e.g., RCRA transportation manifests), and ensure compliance with all health and safety procedures; ++EP++

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(8) all sampling activities, sample size, sample locations, frequency of testing, acceptance and rejection criteria, and plans for correcting problems as addressed in the project specifications; (9) detailed descriptions of all reporting requirements for CQA activities, procedures for scheduling and managing submittals, including those of subcontractors, off-site fabricators, suppliers, and purchasing agents; (10) such items as daily summary reports, inspection data sheets, problem identification and corrective measures reports, design acceptance reports, and final documentation; and, (11) provisions for the final storage of all records.

11. Remedial Action. Within 30 calendar days of approval of the CQAPP by EPA, after a reasonable opportunity for review and comment by the State, Settling Defendants shall implement the activities required under the approved Remedial Design Plans and Specifications (SOW Task II). The Settling Defendants shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedial Design Plans and specifications (SOW Task II) in accordance with the approved schedule for review and approval pursuant to Section XII of this Consent Decree (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, Settling Defendants shall not commence physical on-site activities at the Site prior to approval of the CQAPP. ++EP++

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12. The Defendants' Work performed by the Settling Defendants pursuant to this Consent Decree shall include the obligation to achieve the Performance Standards.

13. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or the RD/RA Work Plan constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW and the Work Plan will achieve the Performance Standards. Settling Defendants' compliance with the

work requirements shall not foreclose Plaintiff from seeking compliance with all terms and conditions of this Consent Decree, including, but not limited to, the applicable Performance Standards.

14. Settling Defendants shall, prior to any shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. The Settling Defendants shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state. ++EP++

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b. The identity of the receiving facility and state will be determined by the Settling Defendants following the award of the the contract for Remedial Action construction. The Settling Defendants shall provide the information required by Paragraph 14.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VII. ADDITIONAL RESPONSE ACTIONS

15. In the event that EPA determines or the Settling Defendants propose that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD, notification of such additional response actions shall be provided to the Project Coordinator for the other party.

16. Within 30 days of receipt of notice from EPA or Settling Defendants pursuant to Paragraph 15 that additional response actions are necessary or such longer time as may be specified by EPA, Settling Defendants shall submit for approval by EPA, after reasonable opportunity for review and comment by the State, a work plan for the additional response actions. The plan shall conform to the applicable requirements of Paragraphs 10 and 11. Upon approval of the plan pursuant to Section XII (Submissions Requiring Agency Approval),

Settling Defendants shall implement the plan for additional response actions in accordance with the schedule contained therein. ++EP++

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17. Any additional response actions that Settling Defendants determine are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD shall be subject to approval by EPA, after reasonable opportunity for review and comment by the State, and, if authorized by EPA, shall be completed by Settling Defendants in accordance with plans, specifications, and schedules approved or established by EPA pursuant to Section XII (Submissions Requiring Agency Approval).

18. Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD. Such a dispute shall be resolved pursuant to paragraphs 60-63 of this Consent Decree.

VIII. EPA PERIODIC REVIEW

19. Settling Defendants shall conduct any studies and investigations not inconsistent with the NCP as requested by EPA in order to permit EPA to conduct reviews at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

20. If required by Sections 113(k)(2) or 117 of CERCLA, Settling Defendants and the public will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the public comment period.

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After the period for submission of written comments is closed, the Regional Administrator, EPA Region V, or his/her delegate will determine in writing whether further response actions are appropriate.

21. If the Regional Administrator, EPA Region V, or his/her delegate determines that information received, in whole or in part, during the review conducted pursuant to Section 121(c) of CERCLA, indicates that the Remedial Action for the operable unit described in the ROD is not protective of human health and the environment, the Settling Defendants shall undertake any further response actions EPA has determined are appropriate, unless their liability for such further

response actions is barred by the Covenants Not to Sue set forth in Section XXII. Settling Defendants shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Defendants' Work by Settling Defendants) and shall implement the plan approved by EPA. The Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute (1) EPA's determination that the remedial action is not protective of human health and the environment, (2) EPA's selection of the further response actions ordered as arbitrary and capricious or otherwise not in accordance with law, or (3) EPA's determination that the Settling Defendants' liability for the further response actions requested is reserved in Paragraphs 78,79, or 81 or otherwise not barred by the Covenants Not to Sue forth in Section XXII. ++EP++

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IX. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

22. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," December 1980, (QAMS-005/80); "Data Quality Objective Guidance," (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, (EPA 330/9-78-001-R); and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") to EPA and the State that is consistent with the SOW, the NCP and the guidance documents listed above. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendants shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. ++EP++

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In addition, Settling Defendants shall ensure that such laboratories

shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree. Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program.

23. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. Settling Defendants shall notify EPA and the State not less than 14 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State deem necessary. Upon request, EPA and the State shall allow the Settling Defendants to take split or duplicate samples of any samples either of them takes as part of the Plaintiff's oversight of the Settling Defendant's implementation of the Defendants' Work.

++EP++

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24. Settling Defendants shall submit to EPA 3 copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise. After EPA has validated the results of sampling and/or testing or other data generated by EPA or its contractors, EPA will make them available to Settling Defendants.

25. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

X. ACCESS

26. Commencing upon the date of lodging of this Consent Decree, the Settling Defendants agree to provide the United States and its representatives, including EPA and its contractors, access at all reasonable times to the Site and any other property to which access is required for the implementation of this Consent Decree, to the extent

access to the property is controlled by Settling Defendants, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

- a. Monitoring the Work;
- b. Verifying any data or information submitted to the United States; ++EP++

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- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXV; and
- g. Assessing Settling Defendants' compliance with this Consent Decree.

27. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

XI. REPORTING REQUIREMENTS

28. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA and the State 1 copy of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have

been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. ++EP++

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Settling Defendants shall submit these progress reports to EPA and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Settling Defendants pursuant to Paragraph 46.b of Section XV (Certification of Completion). If requested by EPA, Settling Defendants shall also provide briefing for EPA to discuss the progress of the Defendants' Work. After EPA has notified Settling Defendants pursuant to Paragraph 45.b, Settling Defendants may petition the EPA Remedial Project Manager to revise the required content of progress reports, and to reduce the frequency of required progress reports.

29. The Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity. ++EP++

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30. Upon the occurrence of any event during performance of the Defendants' Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region V, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

31. Within 20 days of the onset of such an event, Settling Defendants shall furnish to Plaintiffs a written report, signed by the Settling Defendant's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

32. Settling Defendants shall submit 3 copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. ++EP++

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Settling Defendants shall simultaneously submit 3 copies of all such plans, reports and data to the State.

33. All reports and other documents submitted by Settling Defendants to EPA (other than the monthly progress reports referred to above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendants.

XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

34. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendants modify the submission; or (e) any combination of the above.

35. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 34(a), (b), or (c), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution) with respect to the modifications or condition made by EPA. In the event that a submission has a material defect and EPA modifies the plan to cure the deficiencies pursuant to Paragraph 34(c), EPA retains its right to seek stipulated penalties, as provided in Section XXI. ++EP++

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36. a. Upon receipt of a notice of disapproval pursuant to Paragraph 34(d), Settling Defendants shall, within 14 days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXI, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is

disapproved or modified due to a material defect as provided in Paragraph 37.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 34(d), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

37. If upon resubmission a plan, report, or item, is disapproved by EPA due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely or adequately unless the Settling Defendants invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution) and this Court overturns EPA's disapproval pursuant to that Section. The provisions of Section XX (Dispute Resolution) and Section XXI (Stipulated Penalties) shall govern the implementation of the Defendants' Work and accrual and payment of any stipulated penalties during Dispute Resolution. ++EP++

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If EPA's disapproval is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXI.

38. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to amend or develop the plan, report or other item. Settling defendants shall implement any such plan, report, or item as amended or developed by EPA, subject only to their right to invoke the procedures set forth in Section XX (Dispute Resolution).

39. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval by EPA, be enforceable under this Consent Decree. In the event EPA approves a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved portion shall be enforceable under this Consent Decree.

XIII. PROJECT COORDINATORS

40. Within 20 days of lodging this Consent Decree, Settling Defendants and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is

changed, the identity of the successor will be given to the other parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. ++EP++

Page 33

The Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Defendants' Work. The Settling Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representative for oversight of performance of daily operations during remedial activities.

41. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when he or she determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material. ++EP++

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42. EPA's Project Coordinator and the Settling Defendants' Project Coordinator shall confer, at a minimum, on a monthly basis, unless the project Coordinators agree to a different schedule.

XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

43. a. Prior to lodging of the Consent Decree, Settling Defendants provided EPA with information regarding their financial resources and their ability to finance the Defendants' Work. Plaintiff has reviewed this information and is satisfied that Settling Defendants have sufficient financial resources to assure that they can and shall timely complete all of the Defendants' Work.

b. If any material change occurs in the financial resources of any Settling Defendant such that Settling Defendants collectively may no

longer have the financial ability to assure timely completion of the Defendants' Work, Settling Defendants shall promptly notify EPA.

c. If Plaintiff obtains information regarding any material change in the financial resources of any Settling Defendant that leads EPA to believe that the Settling Defendants collectively may no longer have the financial ability to assure timely completion of all of the Defendants' Work, Plaintiff shall so notify Settling Defendants. Settling Defendants shall have sixty (60) days after receiving any such written notice to respond and provide corrected or supplemental information, or otherwise demonstrate to Plaintiff's satisfaction that Settling Defendants collectively do have the ability to timely complete all of the Defendants' Work. ++EP++

Page 35

d. If within sixty (60) days after receiving notice noted in subparagraph (c) above, the Settling Defendants do not demonstrate to Plaintiff's satisfaction that they collectively do have the ability to timely complete all the Defendants' Work, Plaintiff may require Settling Defendants to establish and maintaining financial security for the estimated cost of the Defendants' Work remaining to be completed in one of the forms described in 40 CFR 264.143. Within thirty (30) days of receiving written notice of such requirement by Plaintiff, the Settling Defendants shall demonstrate that they have established and are maintaining financial security in one of the forms described in 40 CFR 264.143.

44. If the Settling Defendants seek to demonstrate the ability to complete the Defendants' Work through a guarantee by a third party pursuant to Paragraph 43.d of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Defendants' Work by means of the financial test or the corporate guarantee pursuant to Paragraph 43.d, they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. ++EP++

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In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendants shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other

forms of financial assurance listed in Paragraph 43 of this Consent Decree. Settling Defendants' inability to demonstrate financial ability to complete the Defendants' Work shall not excuse performance of any activities required under this Consent Decree.

XV. CERTIFICATION OF COMPLETION

45. Completion of the Remedial Action

a. Within 90 days after Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants and EPA. If, after the pre-certification inspection, the Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XII (Submissions Requiring Agency Approval) within 30 days of the inspection. In the report, a registered professional engineer and the Settling Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. ++EP++

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The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendants in writing of the activities that must be undertaken to complete the Remedial Action and achieve the Performance Standards. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a

schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution). ++EP++

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b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been fully performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXII (Covenants Not to Sue by Plaintiffs). Except as otherwise provided in Paragraph 77.b, Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree.

46. Completion of the Work

a. Within 90 days after Settling Defendants conclude that all phases of the Work (including O & M), have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants and EPA. If, after the pre-certification inspection, the Settling Defendants still believe that the Work has been fully performed, Settling Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator: ++EP++

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"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken to complete the Work. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendants and after a reasonable opportunity for review and comment by the State, that the Work has been fully performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing. ++EP++

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XVI. EMERGENCY RESPONSE

47. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 48, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendants shall notify the EPA Emergency Response Unit, Region V. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendants shall reimburse EPA for all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Reimbursement of Response Costs).

48. Nothing in the preceding Paragraph or in this Consent Decree

shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site. ++EP++

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XVII. REIMBURSEMENT OF RESPONSE COSTS

49. Within 45 days of the effective date of this Consent Decree, Settling Defendants shall pay to the United States \$2,931,225.19, in reimbursement of Past Response Costs, by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing the Carter Industrials Site, the CERCLA Number 5F and the U.S.A.O. file number 9002288. Payment shall be made in accordance with instructions provided by the Plaintiff to the Settling Defendants upon execution of the Consent Decree. Any EFTs received at the U.S. DOJ lockbox bank after 11:00 A.M. (Eastern Time) will be credited on the next business day.

50. Settling Defendants shall reimburse the United States for all Future Response Costs not inconsistent with the National Contingency Plan incurred by the United States, except for Costs on Non-Party Enforcement, if any. The United States will send Settling Defendants a bill requiring payment that includes a complete Itemized Cost Summary, which includes direct and indirect costs incurred by EPA, DOJ and their contractors on a periodic basis. Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 51.

++EP++

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The Settling Defendants shall make all payments required by this Paragraph in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund" and referencing the Carter Industrials Site, the CERCLA Number 5F and DOJ Case Number 90-11-2-194C. The Settling Defendants shall forward the certified check(s) to U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673, and shall send copies of the check(s) to the United States and to EPA as specified in Section XXVII (Notices and Submissions).

51. Settling Defendants may contest payment of any costs under Paragraph 50 if they determine that the United States has made an

accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 50. Simultaneously, the Settling Defendants shall establish an interest bearing escrow account in a federally-insured bank duly chartered in the State of Michigan and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendants shall send to the United States, as provided in Section XXVII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. ++EP++

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Simultaneously with establishment of the escrow account, the Settling Defendants shall initiate the Dispute Resolution procedures in Section XX (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Defendants shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 50. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 50; Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

52. In the event that the payments required by Paragraph 49 are not made within 30 days of the effective date of this Consent Decree or the payments required by Paragraph 50 are not made within 30 days of the Settling Defendants' receipt of the bill, Settling Defendants shall pay

interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. Section 9607. ++EP++

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The interest to be paid on Past Response Costs shall begin to accrue on the effective date of the Consent Decree. The interest on Future Response Costs shall begin to accrue on the date of the Settling Defendants' receipt of the bill. Interest shall accrue at the rate specified through the date of the Settling Defendant's payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this Section.

XVIII. INDEMNIFICATION AND INSURANCE

53. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives ("Indemnified Parties") for or from any and all claims or causes of action arising from, or on account of, acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. ++EP++

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Further, the Settling Defendants agree to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States. The United States shall timely notify

Settling Defendants of any claims or actions under this section, provided, however, that failure by the United States to so notify the Settling Defendants shall not cause the United States to forfeit its rights under this section.

54. Settling Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. ++EP++

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In addition, Settling Defendants shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. The United States shall timely notify Settling Defendants of any claims or actions under this section, provided, however, that failure by the United States to so notify the Settling Defendants shall not cause the United States to forfeit its rights under this section.

55. a. Prior to lodging of the Consent Decree, Settling Defendants provided EPA with information that satisfies EPA as to their financial resources and their ability to provide the equivalent of comprehensive general liability insurance with limits of \$3 million dollars, combined single limit.

b. If, prior to the first anniversary of EPA's Certification of Completion of the Remedial Action, any material change occurs in the financial resources of any Settling Defendant such that Settling Defendants may no longer have the financial ability to assure their ability to provide the equivalent of comprehensive general liability insurance with limits of \$3 million dollars, combined single limit, Settling Defendants shall promptly notify EPA. ++EP++

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c. If, prior to the first anniversary of EPA's Certification of Completion of the Remedial Action, Plaintiff obtains information regarding any material change in the financial resources of any Settling Defendant that leads EPA to believe that the Settling

Defendants collectively may no longer have the financial ability to provide the equivalent of comprehensive general liability insurance with limits of \$3 million dollars, combined single limit, Plaintiff shall so notify Settling Defendants. Settling Defendants shall have sixty (60) days after receiving any such written notice to respond and provide corrected or supplemental information, or otherwise assure Plaintiff that Settling Defendants collectively do have the ability to provide the equivalent of comprehensive general liability insurance with limits of \$3 million dollars, combined single limit.

d. If Settling Defendants do not satisfactorily resolve Plaintiff's concerns within sixty (60) days after receiving notice noted in subparagraph (c) above, Plaintiff may require Settling Defendants to obtain comprehensive general liability and automobile insurance with limits of \$3 million dollars, combined single limit naming as additional insured the United States.

e. For the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree.

++EP++

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Prior to commencement of the Defendants' Work under this Consent Decree, Settling Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Settling Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XIX. FORCE MAJEURE

56. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants or of any entity controlled by Settling Defendants, including, but not limited to, their contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the

obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. ++EP++

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"Force Majeure" does not include financial inability to complete the Defendants' Work or a failure to attain the Performance Standards.

57. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Hazardous Waste Management Division, EPA Region V, within 48 hours of when Settling Defendants first knew or should have known that the event might cause a delay. Within 5 days thereafter, Settling Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. ++EP++

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Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event. Settling Defendants shall be deemed to have notice of any circumstance of which their contractors or subcontractors had or should have had notice.

58. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force

majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

59. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 56 and 57, above. ++EP++

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If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XX. DISPUTE RESOLUTION

60. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising between the United States and Settling Defendants under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

61. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. ++EP++

Page 52

62. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 14 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under paragraph 63 or 64.

b. Within fourteen (14) days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 63 or 64.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 63 or 64, the Parties shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 63 and 64.

++EP++

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63. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitations: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling

Defendants regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Paragraph, and any other documents that form the basis of the Agency's decision. The record shall be available for inspection and copying by all parties. Where appropriate, EPA may allow submission of supplemental statements of position by the Parties to the dispute.

b. The Director of the Waste Management Division, EPA Region V, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 63.a. ++EP++

Page 54

This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 63.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 63.b. shall be reviewable by this Court, provided that a notice of judicial appeal is filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' notice of judicial appeal.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraphs 63.a. In accordance with CERCLA Section 113(j)(1), 42 U.S.C. Section 9613(j)(1), otherwise applicable principles of administrative law shall govern whether any supplemental materials may be considered by the Court. ++EP++

Page 55

64. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 62, the Waste Management Division Director will issue a final decision resolving the dispute. The Waste Management Division Director's decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on all Parties a notice of judicial appeal setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' notice of judicial appeal.

b. Notwithstanding Paragraph M of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law.

65. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree not directly in dispute, unless EPA or the Court agrees otherwise. ++EP++

Page 56

Payment of stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 74. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the paid as provided in Section XXI (Stipulated Penalties).

XXI. STIPULATED PENALTIES

66. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraph 67 and 68 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XIX (Force Majeure). "Compliance" by Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

67. The following stipulated penalties shall be payable per violation per day to the United States for any noncompliance identified below: ++EP++

Page 57

Penalty per violation per day
and Period of Noncompliance

1 - 30	31 - 60	OVER 60
DAYS	DAYS	DAYS

Failure to meet a major	\$1000	\$2000	\$6000
-------------------------	--------	--------	--------

Milestone for excavation of
contaminated soil and debris

Failure to meet a Major	\$2000	\$5000	\$10000
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Milestone for treatment by Low

Temperature Thermal Desorption
of the PCB contaminated
material

Failure to construct	\$2000	\$4000	\$8000
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containment cell by the final
deadline in the approved schedule@@

Failure to monitor the	\$1000	\$2000	\$4000
------------------------	--------	--------	--------

containment cell and

groundwater quality in

accordance with the approved

O&M plan

Failure to comply with any of \$500 \$1000 \$2000

the notice requirements of this

Decree

Failure to take appropriate \$2500 \$5000 \$10000

action to prevent, abate, or

minimize an endangerment under

Section XVI of this Decree

(until appropriate action is

taken or is no longer@@necessary)

68. The following stipulated penalties shall be payable per violation per day to the United States for failure to submit timely or adequate reports or other written documents identified below: ++EP++

Page 58

Penalty per violation per day

and Period of Noncompliance

1 - 30 31 - 60 OVER 60

DAYS DAYS DAYS

Failure to submit progress

reports:

Monthly Progress Report	\$ 300	\$ 600	\$ 1200
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O & M Report	\$ 500	\$ 1000	\$ 2000
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Failure to submit the following

plans, documents or reports

(draft or final):

RA/RA Work Plan	\$ 2000	\$ 4000	\$ 8000
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Design Plans and Specifications

Preliminary (30%)	\$ 1000	\$ 2000	\$ 5000
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Intermediate (60%)	\$ 1000	\$ 3000	\$ 5000
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Pre-Final (95%)	\$ 2000	\$ 4000	\$ 7500
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Final (100%)	\$ 3000	\$ 5000	\$ 10000
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Operation and Maintenance Plan	\$ 1000	\$ 2000	\$ 5000
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Construction QAPP	\$ 1000	\$ 2000	\$ 5000
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69. In the event that EPA assumes performance of a portion or all of the Defendants' Work pursuant to Paragraph 82 of Section XXII (Covenants Not to Sue by Plaintiffs), Settling Defendants shall be liable for a stipulated penalty in the amount of \$10,000.

70. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate

violations of this Consent Decree. ++EP++

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71. Following EPA's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendants written notification of the same and describe the noncompliance. EPA may send the Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendants of a violation.

72. All penalties owed to the United States under this section shall be due and payable within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XX (Dispute Resolution). All payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673, and shall reference CERCLA Number 5F and DOJ Case Number 90-11-2-194C. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVII (Notices and Submissions).

73. The payment of penalties shall not alter in any way Settling Defendants' obligation to complete the performance of the Defendants' Work required under this Consent Decree. ++EP++

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74. Penalties shall continue to accrue as provided in Paragraph 70 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the

District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendants to the extent that they prevail.

75. a. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 72 at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. Section 9607. ++EP++

Page 61

b. Nothing in this Section shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA.

76. No payments made under this Section shall be tax deductible for Federal tax purposes.

XXII. COVENANTS NOT TO SUE BY PLAINTIFF

77. a. Covenants Pursuant to 42 U.S.C. Section 9622(f)(1). In consideration of the actions that will be performed and the payment that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 78, 79, and 81.a of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 106 and 107(a) of CERCLA and Section 7003 of RCRA for performance of the Work and for recovery of Past and Future Response Costs. These covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 49 of Section XVII (Reimbursement of Response Costs). These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person. ++EP++

Page 62

B. Covenant Pursuant to 42 U.S.C. Section 9622(f)(2)(B). In consideration of the actions to be taken by the Settling Defendants to permanently destroy certain hazardous substances as required under the terms of the Consent Decree, and except as specifically provided in Paragraph 81.b, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to sections 106 and 107(a) of CERCLA and section 7003 of RCRA for any future liability for any release or threatened release of hazardous substances which Settling Defendants have destroyed in accordance with Paragraph II.D.4 of the Statement of Work. EPA has determined that destruction of PCB oils in compliance with the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., and its implementing regulations and disposal of any solid byproducts of the destruction process in compliance with the Resource, Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. and its implementing regulations will meet the standards of CERCLA Section 122(f)(2)(B). This covenant not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to paragraph 45.b of section XV (Certification of Completion) of this Consent Decree. This subparagraph shall not be subject to the reservation of rights found in Paragraph 79, below. This covenant not to sue extends only to the Settling Defendants and does not extend to any other person. ++EP++

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78. United States' Pre-certification reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to certification of completion of the Remedial Action:

(i) conditions at the Site, previously unknown to EPA, are discovered, or

(ii) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or this information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

79. United States' Post-certification reservations. Notwithstanding any other provision of this Consent Decree, except Subparagraph 77.b, above, the United States reserves, and this Consent Decree is without

prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to certification of completion of the Remedial Action: ++EP++

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(i) conditions at the Site, previously unknown to EPA, are discovered, or

(ii) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

80. For purposes of Paragraph 78, the information previously received by and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 79, the information previously received by and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision, the administrative record supporting the Record of Decision, and any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

81. a. General reservations of rights with respect to Paragraph 77.a. The covenants not to sue set forth in Paragraph 77.a do not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following: ++EP++

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(1) claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

(3) liability for damages for injury to, destruction of, or loss of natural resources;

(4) liability for response costs that have been or may be incurred

by the United States Department of the Interior or any other trustee for natural resources;

(5) criminal liability;

(6) liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and

(7) liability for additional operable units at the Site or the final response action.

b. General reservations of rights with respect to Paragraph 77.b. The covenant not to sue set forth in Paragraph 77.b does not pertain to any matters other than those expressly specified therein. In the event that the covenant is granted pursuant to Paragraph 77.b, the United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following: ++EP++

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(1) claims based on Section 122(f)(5) of CERCLA, 42 U.S.C. Section 9622(f)(5);

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site, except for Waste Materials resulting from the thermal destruction offsite of recovered waste oil products containing PCBs in a TSCA-complaint facility;

(3) liability for damages for injury to, destruction of, or loss of natural resources, except for damages resulting from the thermal destruction offsite of recovered waste oil products containing PCBs in a TSCA-complaint facility;

(4) liability for response costs that have been or may be incurred by the United States Department of the Interior or any other trustee for natural resources, except for response costs resulting from the thermal destruction offsite of recovered waste oil products containing PCBs in a TSCA-complaint facility;

(5) criminal liability;

(6) liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and

(7) liability for additional operable units at the Site or the final response action.

82. In the event EPA determines that Settling Defendants have failed to implement any provisions of the Defendants' Work in an adequate or timely manner, EPA may perform any and all portions of the Defendants' Work as EPA determines necessary. ++EP++

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Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that the Settling Defendants failed to implement a provision of the Defendants' Work in an adequate or timely manner as arbitrary and capricious or otherwise not in accordance with law. Such dispute shall be resolved on the administrative record. Costs incurred by the United States in performing the Defendants' Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVII (Reimbursement of Response Costs).

83. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXIII. COVENANTS BY SETTLING DEFENDANTS

84. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. Section 9507) through CERCLA Sections 106(b)(2), 111, 112, 113 or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site with respect to this Consent Decree, or any claims arising out of response activities at the Site with respect to this Consent Decree. ++EP++

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However, the Settling Defendants reserve, and this Consent Decree is without prejudice to, actions against the United States based on negligent or wilful actions taken directly by the United States (not including oversight or approval of the Settling Defendants plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. Section 9611, or 40 C.F.R. Section 300.700(d).

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

85. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this

decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

86. With regard to claims for contribution against Settling Defendants for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Defendants are entitled, as of the effective date of this Consent Decree, to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. Section 9613(f)(2). ++EP++

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87. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States and the State in writing no later than 60 days prior to the initiation of such suit or claim.

88. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgement and within 10 days of receipt of any order from a court setting a case for trial.

89. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant s shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this paragraph affects the enforceability of the covenants not to sue set forth in Section XXII (Covenants Not to Sue by Plaintiff). ++EP++

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XXV. ACCESS TO INFORMATION

90. Settling Defendants shall provide to EPA, upon request, copies

of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Defendants' Work. Settling Defendants shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Defendants' Work.

91. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. Section 9604(e)(7), and 40 C.F.R. Section 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.
++EP++

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b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and the title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information: and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

92. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data,

or any other documents or information evidencing conditions at or around the Site.

XXVI. RETENTION OF RECORDS

93. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 45.b of Section XV (Certification of Completion of the Remedial Action), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Defendants' Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. ++EP++

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Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 45.b of Section XV (Certification of Completion), Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

94. At the conclusion of this document retention period, Settling Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall deliver any such records or documents to EPA. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. ++EP++

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However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

95. Each Settling Defendant hereby certifies, individually, that, to the best of its knowledge, it has not altered, mutilated, discarded,

destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA and Section 3007 of RCRA.

XXVII. NOTICES AND SUBMISSIONS

96. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendants, respectively. ++EP++

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As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611

Ben Franklin Station
Washington, D.C. 20044
Re: DOJ 90-11-2-194C
and

Director, Waste Management Division
United States Environmental Protection Agency Region V
77 West Jackson Boulevard
Chicago, Illinois 60604

As to EPA:

U.S. Environmental Protection Agency, Region V
Office of Superfund
Attn: Carter Industrials Project Manager (MI/WI Section)
77 West Jackson Boulevard
Chicago, Illinois 60604

As to the Settling Defendants:

Christopher J. Dunskey
Honigman Miller Schwartz & Cohn

2290 First National Building
Detroit, Michigan 48226-3583
XXVIII. EFFECTIVE DATE

97. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXIX. RETENTION OF JURISDICTION

98. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XX (Dispute Resolution) hereof. ++EP++

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XXX. APPENDICES

99. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the ROD.

"Appendix B" is the SOW.

"Appendix C" is the description and/or map of the Site.

"Appendix D" is the RD/RA Work Plan, to be supplied within 60 days after the lodging of this decree.

"Appendix E" is the complete list of the Settling Defendants.

XXXI. COMMUNITY RELATIONS

100. Settling Defendants shall propose to EPA their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site. ++EP++

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XXXII. MODIFICATION

101. Schedules specified in this Consent Decree for completion of

the Defendants' Work may be modified by agreement of the Parties. All such modifications shall be made in writing.

102. No material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendants.

103. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

104. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. Section 9622(d)(2), and 28 C.F.R. Section 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. ++EP++

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Settling Defendants consent to the entry of this Consent Decree without further notice.

105. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIV. SIGNATORIES/SERVICE

106. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

107. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

108. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. ++EP++

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SO ORDERED THIS DAY OF , 19.
United States District Judge
++EP++

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THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Chrysler Corporation, et al., relating to the Carter Industrials Superfund Site.

FOR THE UNITED STATES OF AMERICA
Vicki A. O'Meara
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530
/s/ SIGNATURE ILLEGIBLE
Elliot Eder
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530
Stephen J. Markman
United States Attorney
Eastern District of Michigan
U.S. Department of Justice
231 W. LaFayette, Eighth Floor
Detroit, Michigan 48226
/s/ SIGNATURE ILLEGIBLE
Herbert H. Tate, Jr.

Assistant Administrator for
Enforcement
U.S. Environmental Protection
Agency
401 M Street, S.W.
Washington, D.C. 20460 ++EP++

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/s/ Patricia L. Sims
Patricia Sims
Office of Enforcement
U.S. Environmental Protection
Agency
401 M Street, S.W.
Washington, D.C. 20460
/s/ SIGNATURE ILLEGIBLE
Valdas V. Adamkus
Regional Administrator, Region V
U.S. Environmental Protection
Agency
77 West Jackson Boulevard
Chicago, Illinois 60604
/s/ Timothy J. Thurlow
Timothy J. Thurlow
Assistant Regional Counsel
U.S. Environmental Protection
Agency Region V
77 West Jackson Boulevard
Chicago, Illinois 60604 ++EP++

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter
of United States v. Chrysler Corporation, et al., relating to the
Carter Industrials Superfund Site.

FOR CHRYSLER CORPORATION
/s/ Anthony E. Micale /*/
Anthony E. Micale
Assistant Secretary

((/*/ Please type name, title, and address below signature.))

Date: Sept. 15, 1992

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: R.D. Houtman
Title: Assistant Secretary
Address: 12000 Chrysler Drive.
Highland Park.
MI 48288-1919
Tel. Number: (313) 956-5532
++EP++

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Chrysler Corporation, et al., relating to the Carter Industrials Superfund Site.

FOR THE CITY OF BATTLE CREEK
/s/ Paul R. Levy /*/
Paul R. levy
City Attorney
P. O. Box 1717
Battle Creek MI 49016-1717

((/*/ Please type name, title, and address below signature.))

Date: 9/22/92

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Paul R. Levy
Title: City Attorney
Address: P. O. Box 1717, Battle
Creek MI 49016-1717
Tel. Number: (616) 966-3385
++EP++

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Chrysler Corporation, et al., relating to the Carter Industrials Superfund Site.

FOR THE CITY OF DETROIT
/s/ Darryl F. Alexander /*/
Darryl F. Alexander
Assistant Corporation Counsel
735 Randolph, Room 1006
Detroit, MI 48226

((/*/ Please type name, title, and address below signature.))

Date: 10-6-92

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Darryl F. Alexander
Title: Assistant Corporation
Counsel
Address: 735 Randolph, Room
1006, Detroit, MI 48226
Tel. Number: 313-224-475 ++EP++

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Chrysler Corporation, et al., relating to the Carter Industrials Superfund Site.

FOR CONSUMERS POWER COMPANY
/s/ David A. Mikelonis /*/
David A. Mikelonis
Senior Vice President and General
Counsel
Consumers Power Company
212 West Michigan Avenue
Jackson, MI 49201

((/*/ Please type name, title, and address below signature.))

Date: 9/22/92

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: John P. Dickey
Title: Attorney
Address: 212 West Michigan
Avenue
Tel. Number: (517) 788-1846
++EP++

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Chrysler Corporation, et al., relating to the Carter Industrials Superfund Site.

FOR DETROIT DIESEL CORPORATION
/s/ Leland L. Grubb /*/
Leland L. Grubb, Jr.
Sr. Vice President - Finance
13400 Outer Drive West
Detroit, Michigan 48239-4001

((/*/ Please type name, title, and address below signature.))

Date: October 5, 1992

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: CT Corporation
Title: 615 Griswold
Address: Detroit, Michigan 48226
Tel. Number: (313) 961-3070
++EP++

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Chrysler Corporation, et al., relating to the Carter Industrials Superfund Site.

For The Detroit Edison Company
/s/ Robert J. Buckler /*/
Robert J. Buckler
Vice President-Divisions
The Detroit Edison Company
2000 Second Avenue, 2418 WCB
Detroit, MI 48226

((/*/ Please type name, title, and address below signature.))

Date: September 22, 1992

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Thomas P. Beagen
Title: Special Counsel
Address: 2000 Second Avenue, Rm.
688WCB
Tel. Number: 237-7721 ++EP++

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Chrysler Corporation, et al., relating to the Carter Industrials Superfund Site.

FOR EDW. C. LEVY COMPANY
/s/ SIGNATURE ILLEGIBLE /*/
Brij Sapru
Director of Engineering &
Environmental Services
9300 Dix Ave.
Dearborn, MI 48120
October 6, 1992

((/*/ Please type name, title, and address below signature.))

Agent Authorized to Accept Service on Behalf of Above-signed party:

Name: Roy Bigham
Title: Environmental Engineer
Address: 9300 Dix Ave.,
Dearborn, MI 48120
Tel. Number: 313-843-7200 ++EP++

Page 88

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Chrysler Corporation, et al., relating to the Carter Industrials Superfund Site.

FOR FORD MOTOR COMPANY

/s/ SIGNATURE ILLEGIBLE /*/
J. M. Rintamaki, Assistant
Secretary
c/o R. W. Quisling
One Parklane Boulevard
728 Parklane Towers East
Dearborn, MI 48126-2493

((/*/ Please type name, title, and address below signature.))

Date: 9/22/92

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: J. A. Courter

Title: Secretary
Address: The American Road,
Dearborn,
MI, 48121-1899
Tel. Number: (313) 323-2260
++EP++

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Chrysler Corporation, et al., relating to the Carter Industrials Superfund Site.

FOR GENERAL MOTORS CORPORATION

/s/ Jeffrey N. Braun /*/
Jeffrey N. Braun

((/*/ Please type name, title, and address below signature.))

Date: 10-2-92

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Jeffrey N. Braun
Title: Attorney

Address: P.O. Box 33122 Detroit,
MI 48232
Tel. Number: 313-974-1764 ++EP++

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Chrysler Corporation, et al., relating to the Carter Industrials Superfund Site.

FOR KELSEY-HAYES COMPANY

/s/ Joseph F McCarthy /*/
Joseph F. McCarthy
Secretary
38481 Huron River Dr. Romulus, MI
48174

((/*/ Please type name, title, and address below signature.))

Date: October 5, 1992

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Leonard F. Charla
Title: Counsel
Address: Butzel Long, Suite 900,
150 West Jefferson, Detroit, MI
48226-4430
Tel. Number: (313) 225-7016
++EP++

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Chrysler Corporation, et al., relating to the Carter Industrials Superfund Site.

FOR LEAR SIEGLER DIVERSIFIED HOLDINGS CORP.

/s/ James F Matthews /*/
James F. Matthews
Vice President and General
Counsel
220 South Orange Avenue
Suite 105
Livingston, New Jersey 07039

((/*/ Please type name, title, and address below signature.))

Date: 9/28/92

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Barry Bernstein, Esq.

Address: Box 423 Basking Ridge
NJ 07920
Tel. Number: (908) 766-1700
++EP++

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States, v. Chrysler Corporation, et al., relating to the Carter Industrials Superfund Site.

For: ROUGE STEEL COMPANY
/s/ William E Hornberger
William E. Hornberger
Vice President, Employee
Relations
3001 Miller Road, Dearborn, MI
48121

Date: July 20, 1992

Agent Authorized to Accept Service on Behalf of Above-signed Party:
For purposes of this action only:

Ford Motor Company
Name: J. A. Courter
Title: Secretary
Address: The American Road,
Dearborn,
MI 48121-1899
Tel. No. (313) 323-2260 ++EP++

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Chrysler Corporation, et al., relating to the Carter Industrials Superfund Site.

FOR SHAW ELECTRIC COMPANY
/s/ George Friess /*/
George Friess, President
33200 Schoolcraft
Livonia, MI 48150
(313) 425-6800
Date: Oct 9, 92

((/*/ Please type name, title, and address below signature.))

Agent Authorized to Accept Service on Behalf of Above-signed Party:
Name: Thomas D. Allen

Title: Attorney
Address: 30903 Northwestern Hwy,
FH
Tel. Number: (313) 851-9500
++EP++

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Chrysler Corporation, et al., relating to the Carter Industrials Superfund Site.

FOR VOLKSWAGEN OF AMERICA
/s/ Gerhard P. Riechel /*/
Gerhard P. Riechel
Date: 9/22/92

((/*/ Please type name, title, and address below signature.))

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Gerhard P. Riechel
Title: Secretary of the
Corporation
Address: 3800 Hamlin Rd.,
Auburn Hills, MI 48326
Tel. Number: (313) 340-4785
++EP++

ATT 1-1

STATEMENT OF WORK FOR REMEDIAL DESIGN AND REMEDIAL ACTION CARTER INDUSTRIALS SITE WAYNE COUNTY, MICHIGAN

I. PURPOSE

The purpose of this Statement of Work (SOW) for the Carter Industrials Superfund Site ("Site") is to implement the Record of Decision which was signed by the U.S. Environmental Protection Agency (U.S. EPA) on September 18, 1991.

The Record of Decision (ROD), the Consent Decree, the U.S. EPA Superfund Remedial Design and Remedial Action Guidance, the approved Remedial Design/Remedial Action (RD/RA) Work Plan, this SOW and any additional guidance documents provided by U.S. EPA shall be followed in designing and implementing the remedial action at the Carter Industrials site.

II. DESCRIPTION OF THE REMEDIAL ACTION

The standards and specifications of the major components of the remedial action for the Carter Industrials Site that shall be designed

and implemented by the Settling Defendants are:

A. Excavation and Removal of Underground Storage Tank Settling Defendants shall provide for removal and disposal of the liquid present in the underground storage tank discovered at the site, excavation and removal of the underground storage tank, and sampling and removal of any soil which is determined to have been contaminated by leakage from the tank.

The Underground Storage Tank (UST) shall be handled in the following manner: its contents shall be sampled, and based on the analytical results, the contents of the tank shall be pumped out and transported off-site to a permitted treatment and/or disposal facility or treated in the LTDD system if it can be demonstrated that it will not adversely affect the functioning of the LTDD system. The tank shall then be decontaminated and removed in accordance with the State and Federal UST requirements. The soils beneath the tank shall be inspected visually and with a photoionization detector for the presence of volatile organic compounds, including gasoline or gasoline by products. Any contaminated soils shall be excavated and the bottom of the excavation sampled to confirm adequate excavation. Settling Defendants shall sample and characterize the excavated soil for ultimate disposal. If Settling Defendants can demonstrate that the LTDD system can remove contaminants associated with the UST, the U.S. EPA, in consultation with the MDNR, may approve this treatment. The Settling Defendants shall decontaminate the tank and dispose of the tank as scrap metal.

If, in U.S. EPA's judgment, off-site disposal of the tank or tank contents is necessary, the Settling Defendants must obtain U.S. EPA approval prior to use of an off-site treatment facility for tank contents, or an off-site landfill for tanks. The treatment facility must be in compliance with all applicable or relevant and appropriate State and Federal regulations and the requirements set forth in CERCLA Section 121(d)(3). The landfill must be in compliance with all applicable or relevant and appropriate State and Federal regulations and the requirements set forth in CERCLA Section 121(d)(3), 42 U.S.C. Section 9621(d)(3). ++EP++

ATT 1-2

B. Existing Fence Maintenance and Security

Settling Defendants shall continue maintaining the existing fence around the entire Site or other fencing agreed to by U.S. EPA, in consultation with MDNR, as soon as the Consent Decree is lodged. The existing fence was constructed by the U.S. EPA Emergency Response Program and consists of a six-foot high chain link perimeter fence

topped with three strands of barbed wire. The fence borders and surrounds the Facility, and includes double, 12-foot wide, locking gates at the north end of Humboldt Boulevard and locking gates near the surface water runoff collection and treatment system units. The existing warning signs shall be maintained at 200-foot intervals along the fence and at the gates. The warning signs state "Warning Hazardous Materials No Trespassing".

After Settling Defendants demonstrate in accordance with Paragraph II(H)(1) of this SOW that on-site soils in all areas other than the containment cell do not exceed the cleanup standards in Section III of this SOW, Settling Defendants shall remove the existing perimeter fence and shall erect a six-foot high, chain-link fence around the perimeter of the containment cell using portions of the current fence as practicable to achieve this requirement or use an alternative security measure for containment cell security which is approved by U.S. EPA in consultation with MDNR.

A security guard shall be present at the Site 24 hours per day beginning on the date of Contractor mobilization and continuing until such a measure is demonstrated, to U.S. EPA's satisfaction, to be no longer necessary to protect the safety of potential trespassers. Security shall not be discontinued without prior approval by the U.S. EPA in consultation with the MDNR.

C. Sewer Line Assessment

Settling Defendants shall conduct an assessment of the sewer lines running from the Carter site up to and including the combined sewer overflow at the Detroit River. The objective of the assessment shall be to determine the levels of PCB in the sewer line water and sediments, the distribution and volume of contaminated sewer sediments present which may be attributable to the Carter Site. This assessment may be conducted at the same time as pre-design sampling and analysis for potential use in determining the feasibility of including any contaminated sediments with the soil and debris to be treated at the Carter site.

Settling Defendants shall also extend the sewer line assessment into the catch basin that appears on sewer line maps as buried under a soil pile at the end of Humboldt Street. The Remedial Design shall incorporate a plan for addressing any contamination in the sewer line catch basin and lines leading to it and a plan for sealing off the sewer lines under the site. All such plans are subject to U.S. EPA approval in consultation with MDNR. ++EP++

ATT 1-3

D. Full-Scale Implementation of Low Temperature Thermal Desorption

Settling Defendants shall perform the Remedial Design and Remedial Action set forth in the ROD, and further described below, for the Carter Industrials Superfund Site. The remedy shall be designed, performed and maintained to achieve the Cleanup Levels and Performance Standards set forth in sections III and IV, respectively, of this SOW. Cleanup Levels have been set for the site based on the Endangerment Assessment (EA) developed for the Site, U.S. EPA's Guidance on Selection of Remedy at PCB Contaminated Superfund Sites, and Federal and State regulations.

1. Identification of Contaminated Soil for LTTD Treatment

Settling Defendants shall excavate all soil and debris contaminated at levels in excess of any Cleanup Level in Section III of this SOW, including contaminated soil and debris located beneath the 18th Street alley from its northern end to a point 200 feet south of Forest Avenue. Areas to be cleaned, excavated and/or tested to verify ≤ 1 mg/Kg PCB are shown in Figure 3. The Settling Defendants shall either screen the soils to be treated from those to be contained without LTTD treatment through use of a level of 10 mg/kg as the cutoff and a sampling frequency of 1 sample per 25 cubic yards of excavated soil to determine the level of PCBs and need for LTTD treatment; or treat the material using LTTD without screening. Prior to placement of either untreated soil and debris or treatment system residual into the containment cell, Settling Defendants shall use LTTD to treat all material containing PCB at levels greater than 10 mg/kg. In addition, Settling Defendants shall treat all material which exceeds RCRA TCLP standards by stabilization/solidification in order to attain the performance standards set forth in Section IV of this SOW.

Prior to placement of either untreated soil and debris or treatment system residual into the containment cell, Settling Defendants shall collect samples for RCRA TCLP analysis at a sampling frequency of 1 composite sample from every 25 cubic yards of soil or ash for material coming from waste pile 4 and the buried ash under waste pile 1. Prior to placement of either untreated soil and debris or treatment system residual into the containment cell, Settling Defendants shall collect samples for RCRA TCLP analysis at a sampling frequency of 1 composite sample from every 1000 cubic yards of soil or ash for material coming from areas other than waste pile 4 and the buried ash under waste pile 1. Prior to disposal of the materials in the on-site cell, Settling Defendants shall solidify or stabilize all materials equalling or exceeding the RCRA TCLP criteria to meet the performance standards in

Section IV of this SOW.

2. Description of LTDD Treatment

Settling Defendants shall stockpile contaminated soil with PCB levels over 10 mg/kg and place it in feed hoppers for delivery to the treatment chamber. The soil, sludge and clay shall be heated to a temperature which is sufficient to vaporize organic contaminants, including PCBs, within the soil matrices. These off-gases shall subsequently be condensed and allowed to density segregate.

Settling Defendants shall store the recovered waste oil product containing PCBs in accordance with the requirements of 40 CFR 761.65.

++EP++

ATT 1-4

The Settling Defendants shall transport the organic fraction containing the PCBs to an off-site incinerator which is in compliance with TSCA and approved by U.S. EPA in consultation with MDNR.

Settling Defendants shall comply with construction requirements for siting and operating an onsite treatment system. Siting of the treatment system shall be subject to U.S. EPA approval, after consultation with the State, and shall take into consideration the proximity to excavated areas and site topography. Settling Defendants shall clear and level the chosen site to be suitable for erection of equipment and facilities. Outdoor illumination for possible multiple shift operation shall also be constructed. A proposed location is shown in Figure 1 and will be further refined by U.S. EPA, in consultation with MDNR, during RD. Settling Defendants shall improve or construct access roads as needed to support equipment traffic.

Based on the operation requirements of the treatment system, if a limited stockpile of material to be treated is maintained, any placement of the material coming from the buried ash under waste pile 1 and the material coming from waste pile 4 outside the Site boundary or "Area of Contiguous Contamination" without limitations shall comply with RCRA requirements including those for stockpiled soil and debris, pursuant to MAC 299.9301, et seq. and RCRA requirements for waste piles (40 CFR 264 Subpart L).

Adequate noise and dust suppressant measures shall be taken to protect the community from the effects of construction. Settling Defendants shall implement dust control measures such that fugitive dust emissions are in compliance with the National Ambient Air Quality Standard for particulate matter with aerodynamic diameter equal to or less than 10 microns. The current standard for particulate matter is 150 micrograms per cubic meter (24 hour average not expected to be

exceeded on more than one day per year) and 50 micrograms per cubic meter (annual arithmetic mean, not to be exceeded).

Settling Defendants shall implement dust emission controls for any untreated stockpiled soil and the treated soil as it exits the treatment system and while it is stockpiled to ensure that the NAAQS standards are not exceeded.

Settling Defendants shall use TCLP in testing all wastestreams, either solid or aqueous in addition to the treated residual, from the thermal treatment process. If it is determined that this material is equal to or exceeds the TCLP criteria and is a characteristic waste, Settling Defendants shall treat and dispose of it in accordance with land disposal restrictions and substantive requirements of the Michigan Hazardous Waste Management Act. The remedial design shall fully detail the handling of the process wastes from the treatment system.

In the event that Settling Defendants plan to demobilize the LTDD system prior to U.S. EPA's determination that all soil and debris contaminated at levels over 10 mg/kg have been excavated and treated to achieve the Performance Standards in Section IV of this SOW, Settling Defendants shall first submit to U.S. EPA a supplemental response action plan and schedule for addressing any materials that do not meet the treatment standards. Settling Defendants shall not demobilize the LTDD system until EPA approves the supplemental response action plan.
++EP++

ATT 1-5

Solidification: The residual from the LTDD system shall be periodically tested for specific site-related parameters using the TCLP, as discussed in Section II(D)(1) of this SOW. If the residual passes the TCLP and also contains between 1 mg/kg and 10 mg/kg PCB, it shall be placed into the on-site containment cell described below. If the residual fails the test, it shall be solidified so as to immobilize the heavy metals. Settling Defendants shall perform treatability testing during RD and propose the type of solidification process to be used for any TCLP toxic treatment system residual or excavated untreated soils. U.S. EPA, in consultation with MDNR, will then have to approve any type of solidification process to be used.

3. On-site Containment Cell

Settling Defendants shall design and construct an on-site containment cell into which they shall only place material meeting the Performance Standards defined in Section IV of this SOW.

The on-site cell shall be constructed in accordance with the requirements of the rules implementing the Michigan Solid Waste

Management Act for lined type II landfills at MAC R299.4307(2)(a) and will meet the requirements for a Type C cleanup under the Michigan Environmental Response Act (1982 P.A. 307, as amended). Technical requirements (See Figure 2) shall include: a compacted clay liner; a leachate collection and pumpout system; a monitoring system capable of detecting leakage from the cell; access restrictions, such as fencing, to maintain integrity of the cap; a permanent marker to demarcate the on-site cell; maintenance activities; and routine inspections. Appropriate institutional controls, such as deed restrictions, shall be imposed to ensure the integrity of the containment structure.

Settling Defendants may elect to include in the hydrogeologic investigation called for under Section IV - Monitoring Systems - Item#2 - studies to identify the geological and geotechnical character of the Site to assist in design of the containment cell. Settling Defendants may petition U.S. EPA, in consultation with MDNR, to approve an alternate design which provides equal or greater protection than the technical requirements for the liner that are outlined in the paragraph above.

The cap for the containment cell shall include a minimum of 2 feet of clay and 42 inches of vegetated soil cover for proper drainage, erosion control, and frost protection. It would be acceptable for the deepest foot of the 42 inches of soil cover to consist of clay, making the total clay thickness equal to 3 feet. It would be acceptable for the upper surface to consist of pavement rather than vegetation.

4. Stack Sampling and Treatment Process Residual Management

During the start-up period, Settling Defendants shall demonstrate under varying operating ranges that controls on the treatment system will be adequate to meet applicable or relevant and appropriate Federal and State requirements for air emissions criteria, in accordance with the Clean Air Act (40 CFR Parts 50 and 52), RCRA requirements at 40 CFR 264 Subpart AA, and Michigan Act 348. ++EP++

ATT 1-6

Settling Defendants shall perform stack sampling and analysis to determine, quantitatively, the air discharges at the end of the off-gas pollution control train and to verify that the system is maintaining the performance levels referred to above. During the start-up period, stack sampling will also be conducted on at least a weekly basis for the first month of full scale operation, and monthly thereafter if U.S. EPA determines that this is appropriate. Settling Defendants may petition U.S. EPA for an alternative sampling schedule based upon data

gathered during the startup period and/or subsequent operation. Stack sampling for particulates shall be done in accordance with U.S. EPA Method 5 and for organics in accordance with U.S. EPA Method 25, unless an alternative method becomes available which EPA recognizes to be superior or equivalent to U.S. EPA Method 5 or 25.

Treatment process residuals shall be handled in accordance with all applicable or relevant and appropriate requirements pertaining to the Site. Spent carbon, if used, from water and/or air treatment systems shall be tested to determine if it is TCLP toxic. If it is determined that the material equals or exceeds RCRA TCLP criteria, Settling Defendants shall handle it as a RCRA waste and dispose of it in accordance with Land Disposal Restrictions or regenerate it off-site. If the material is characteristic via TCLP and it is to be regenerated off-site, it shall be regenerated only at a facility which is in compliance with 40 CFR 264 Subpart X. Recovered waste oil products containing PCBs must be thermally destroyed off-site in a TSCA-compliant facility. Any other treatment residuals must be handled accordingly.

5. Additional Monitoring

Settling Defendants shall sample and analyze all process streams to determine whether products of incomplete combustion (PIC's), including dioxins and furans, are formed during the LTTD process. Such process streams include, but are not limited to, stack exit gases and baghouse and cyclone fines, scrubber blowdown, liquid phase carbon condensate, vapor phase carbon condensate (if steam regeneration is performed at breakthrough) if these respective process streams are generated by the particular LTTD unit selected for use at the Carter Site. Settling Defendants shall perform this monitoring on a weekly basis during the system startup period. Settling Defendants may petition U.S. EPA for an alternative sampling schedule based upon data gathered during the startup period and/or subsequent operation.

E. Decontamination, Demolition and Disposal of Contaminated On-Site Structures

During Remedial Design the Settling Defendants shall prepare a plan for the decontamination, demolition and disposal of on-Site structures for the review and approval of U.S. EPA in consultation with the MDNR. The cleanup levels established for building materials shall be 100 mug/100cm² of PCB for metal and 1 mg/kg of PCB for building debris. Metal demonstrated to meet this cleanup level may be sold for scrap. Building debris, including concrete, brick, wood and related materials meeting the Site cleanup level of 1 mg/kg of PCB may be crushed or otherwise used as fill. ++EP++

ATT 1-7

Building debris ranging from over 1 mg/kg to 10 mg/kg PCB may be crushed or otherwise placed within the containment cell as granular fill. If metal or other building debris can not be decontaminated to meet the appropriate cleanup levels, the Settling Defendants shall dispose of the material in accordance with applicable or relevant and appropriate Federal and State requirements.

F. Site Restoration

Settling Defendants shall backfill on-site excavated areas with clean fill as necessary to meet the final grading requirements within the approved RD/RA Workplan after these areas have been shown to meet the cleanup levels set forth in Section III of this SOW. If processed soil which meets the Cleanup Levels defined in Section III of this SOW is used as clean fill in excavated areas, engineering controls must be implemented which control this material's propensity for fugitive dust emission when it is dry and its "quicksand" behavior when it becomes wet. Prior to U.S. EPA issuance of the Certificate of Completion, the Settling Defendants shall restore the site in accordance with the approved RD/RA workplan, which shall include provisions for grading and revegetating the Site to promote drainage and to minimize erosion.

G. Off-Site Restoration

Prior to U.S. EPA issuance of the Certificate of Completion, Settling Defendants shall replace off-site excavated contaminated soils with clean fill as necessary to return these areas to a normal grade to promote drainage and to minimize erosion as well as revegetating the excavated areas. All other off-site vegetation (trees, shrubs, etc.) and off-site features (fences, etc.) shall be replaced to a condition as close as practicable to its prior condition.

H. Compliance Points

Settling Defendants shall sample the following media to verify that Cleanup Levels and Performance Standards have been met unless the area had previously been sampled and analyzed, and confirmed to meet the cleanup levels by U.S. EPA, in consultation with MDNR:

1. Soils in locations established by predesign sampling set forth in the RD/RA Work Plan. The area of attainment for soil Cleanup Levels defined in Section III of this SOW shall include all areas outside the Site boundary, as identified on Figure 3.
2. Effluent from the leachate pumpout chamber, if any, in the containment cell, surface water runoff from the site, and any groundwater monitoring wells that are successfully installed around the containment cell.

I. Failure to Meet Cleanup Levels or Performance

Standards

If sampling reveals that the remedial action work has not achieved any cleanup level in Section III or any performance standard set forth in Section IV below, or compliance with air emission limitation requirements has not been maintained, Settling Defendants shall promptly notify U.S. EPA and MDNR, and within 30 days shall submit a Supplemental Response Action Plan to both agencies for such actions as are necessary to achieve compliance with all standards and requirements. ++EP++

APP 1-8

Settling Defendants shall implement these response actions upon approval by U.S. EPA in consultation with the State and in accordance with the schedule approved by U.S. EPA in consultation with the State. If U.S. EPA in consultation with the State has already approved an applicable Supplemental Response Action Plan that is being implemented in a timely manner, Settling Defendants may submit a supplemental report on the progress of the on-going supplemental work in lieu of submitting another Supplemental Response Action Plan.

III. CLEANUP LEVELS

The cleanup level for on-site and off-site PCB contaminated soil and debris is 1 mg/kg PCBs.

The following cleanup levels for other contaminants detected at the Site have been selected by U.S. EPA to be protective of human health and the environment in the vicinity of the Carter Site. They also meet substantive components of Michigan's Type B cleanup criteria under Act 307:

	Soil Cleanup		Soil
	Level	Cleanup	
Ground	Required to	Level	
Water	Protect	Based	
Cleanup	Ground	on	
CONTAMINANT	Level	water	Direct
(ppb)	(ug/kg)	Contact	

(mg/kg)

1,3-dichlorobenzene	600	10,000	7,000
1,4-dichlorobenzene	1	20	20
Xylene	300	6,000	200,000
Chlorobenzene	100	2,000	2000
Benzo(a)anthracene	.003	100	0.1
Pyrene	200	4,000	6,000
1,2,4-trichlorobenzene	9	200	100
pentachlorobenzene	6	100	200
tetrachlorobenzene	2	40	80
Lead/*/	5	100	100
Cadmium/*/	4	80	100
Arsenic/*/	0.02	0.4	800
1-ethyl 2-methylbenzene	MDL	MDL	

/*/ background if higher

CONTAMINANT Basis for Cleanup
Level

1,3-dichlorobenzene Oral Reference Dose
1,4-dichlorobenzene 1 x 10⁻⁶ Cancer Risk
Xylene Odor Threshold
Chlorobenzene Oral Reference Dose

Benzo(a)anthracene 1 x 10⁻⁶ Cancer Risk

Pyrene Oral Reference Dose

1,2,4-trichlorobenzene Oral Reference Dose

pentachlorobenzene Oral Reference Dose

tetrachlorobenzene Oral Reference Dose

Lead/*/ Oral Reference Dose

Cadmium/*/ Oral Reference Dose

Arsenic/*/ 1 x 10⁻⁶ Cancer Risk

1ethyl 2methylbenzene

/*/ background if higher ++EP++

ATT 1-9

The cleanup levels for soils which have been chosen for the Site are those shown in the column labelled "Soil Cleanup Level required to protect groundwater". Should these levels change before the remedial action is completed, the Settling Defendants may petition U.S. EPA to accept the revised levels.

The methodology used to calculate cleanup levels is based on Michigan's R299.5709. The column entitled "Ground Water Cleanup Level" is included on this table because it is from these levels that the values to be applied to soil were derived. To obtain the cleanup level for soils which is protective of groundwater, the Ground Water Cleanup Level value is multiplied by 20 and the resulting figure rounded up or down by one significant figure in order to estimate the value in soil which could leach into groundwater. Settling Defendants may petition U.S. EPA to accept different cleanup levels based on site specific leach tests. That is, Settling Defendants may perform further testing and submit data concerning the leachability of contaminants from site soils. U.S. EPA will review any such petition, and in consultation with MDNR, will approve a higher cleanup level if this demonstration satisfies R299.5711(2).

Since lead, cadmium and arsenic may be naturally present in the

soils, the cleanup levels set forth for these three site contaminants may be below background levels. Settling Defendants may petition U.S. EPA to accept different cleanup levels for these three site contaminants. That is, Settling Defendants may elect to perform sampling to establish background levels reflecting representative concentrations existing in the environment at or regionally proximate to the Site that are not attributable to any release at the Site. Settling Defendants shall conduct such background sampling in accordance with the MDNR's Verification of Soil Remediation Guidance. Settling Defendants may then submit data concerning the background levels of these three contaminants. U.S. EPA will review any such petition, and in consultation with MDNR will determine if a higher cleanup level will be justified based upon documented background levels.

For two contaminants in the above table, the cleanup levels are below the MDNR's acceptable method detection limit. The cleanup level set for benzo(a)anthracene is 100 ug/kg. However, the MDNR's acceptable method detection limit is 330 ug/kg. Therefore, a cleanup level of 330 ug/kg may be used for benzo(a)anthracene rather than the level which is based on carcinogenic risk. The cleanup level for arsenic of 0.4 ug/kg is below the MDNR acceptable Method Detection Limit of 50 ug/kg. Therefore, the cleanup level of 50 ug/kg may be used for arsenic rather than the level which is based on carcinogenic risk.

In order to verify the effectiveness of the remedial action, Settling Defendants shall conduct post-excavation sampling in accordance with Section II(H)(1) of this SOW and analysis for all parameters identified in Section III of this SOW.

IV. PERFORMANCE STANDARDS

Settling Defendants shall excavate all soil and debris which are contaminated at levels exceeding the Cleanup Levels set forth in Section III of this SOW. Settling Defendants shall treat material with PCBs at levels exceeding 10 mg/kg by LTTD, followed by solidification/stabilization if the treatment residual is a RCRA TCLP characteristic waste, in order to attain the levels and standards set forth below:
++EP++

ATT 1-10

1. Residuals from the LTTD process shall, at a minimum, meet RCRA Treatability Variance Standards for soil and debris, as set forth in U.S. EPA OSWER Directive No. 9347.3-06FS and the ROD. Residuals that equal or exceed the RCRA TCLP criteria for compounds found at the site that appear on the TCLP list shall be further treated by

solidification/stabilization to meet the RCRA TCLP criteria. Debris that fails the TCLP test and cannot be solidified or decontaminated will be disposed of off-site and will comply with the land disposal restrictions through a treatability variance which calls for decontamination of the debris using best management principles.

2. Settling Defendants shall prepare an operations sampling and analysis plan to demonstrate that the LTTD system is meeting the Cleanup Levels and Performance Standards in Sections III and IV of this SOW, respectively. After receiving approval for the submitted plan by U.S. EPA, in consultation with MDNR, Settling Defendants shall commence sampling and analysis as required under the Plan. The sampling and analysis plan shall address regular operational treated soil composite sampling. The frequency of sampling shall be based upon operational conditions and may be revised, upon approval of the U.S. EPA, as the performance of the LTTD system is established. The Plan shall start with a minimum sampling frequency that provides for a composite treated soil sample which consists of six samples of treated soil collected at approximately 4 hour intervals during operation. Settling Defendants shall combine these six samples to form a composite treated soil sample. Settling Defendants shall split the composite sample into triplicate lots. Settling Defendants shall analyze one lot for PCBs. If the treated soil is found to exceed 10 mg/kg, the Settling Defendants may have the option to reprocess the treated soil or to analyze the remaining two lots and determine if the average concentration exceeds 10 mg/kg PCB. If the results of all three analysis are averaged and the result exceeds 10 mg/kg PCB, the Settling Defendants shall reprocess the treated soil or it must be disposed of off-site at an approved TSCA chemical waste landfill in accordance with 40 CFR 761.75(c)(4).

3. Settling Defendants must demonstrate that the air emission standards required in the ROD, this SOW, and the approved RD/RA Workplan will not be exceeded.

Any materials removed from the Carter site shall be disposed of or treated at facilities approved by the U.S. EPA RPM, in consultation with MDNR and, in addition, in compliance with applicable or relevant and appropriate provisions of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901 et seq., the Toxic Substance Control Act (TSCA), 15 U.S.C. Section 2601, et seq., and other Federal, State, and local requirements, as well as U.S. EPA's Off-site Response Policy from J. Winston Porter (dated: November 13, 1987). ++EP++

ATT 1-11

MONITORING SYSTEMS

1. Health and Safety Monitoring

All remedial workers in the exclusion zone, as defined in the approved Health and Safety Plan, shall be equipped with Level C personal protective equipment. The Health and Safety Plan shall specify respirator usage requirements. The Health and Safety Plan shall also provide for monitoring within the exclusion zone designed to detect any conditions that would necessitate an upgrade in the level of personal protective equipment to Levels B or A at all times during excavation and/or staging of contaminated materials and operation of the LTTD equipment and off-gas pollution control equipment.

Settling Defendants shall report the results of air monitoring activities to U.S. EPA and MDNR on at least a bi-weekly basis unless there is an exceedance of air emissions criteria, in which case the Settling Defendants shall report these results as soon as possible, and under no circumstances later than seven calendar days after the exceedance is identified. If U.S. EPA, in consultation with MDNR, determines that any air emissions exceed any air emissions criteria, in accordance with the Clean Air Act (40 CFR Parts 50 and 52), RCRA requirements at 40 CFR 264 Subpart AA and Michigan Act 348, then the Settling Defendants shall take corrective measures, as developed in the Health and Safety Contingency Plan.

2. Ground Water

Settling Defendants shall perform a hydrogeologic investigation of the Site as part of pre-design sampling. Based upon the findings of the hydrogeologic investigation, Settling Defendants shall develop a groundwater monitoring plan as part of the O&M plan to monitor the integrity of the containment cell and the cap. Settling Defendants shall submit the groundwater monitoring plan for U.S. EPA review and approval, in consultation with MDNR.

The parameters to be analyzed shall include those parameters detected on-site to date, or confirmed during predesign sampling and analysis activities, that have been identified above applicable or relevant and appropriate cleanup levels. At least every five years, the above monitoring shall include all Contract Laboratory Program (CLP) compounds, Toxic Characteristic Leaching Procedure (TCLP), all Tentatively Identified Compounds, (TICs) deemed appropriate by U.S. EPA in consultation with the State and any additional which are found during the five year monitoring scan that are identified as being above applicable or relevant and appropriate cleanup levels shall added to the list of parameters that are analyzed.

If, at any time, groundwater at the Site exceeds a groundwater cleanup level listed in Section III of this SOW and it is determined by

U.S. EPA to be attributable to the Carter Industrials Site, Settling Defendants shall perform additional remedial work, as contemplated by Section VII of the Consent Decree. ++EP++

ATT 1-12

3. Surface Water

Settling Defendants shall monitor surface water runoff at the site. Surface water shall not be discharged from the site without appropriate on-site monitoring and treatment during remediation. Ground water pumped to the surface shall not be discharged from the site without appropriate on-site monitoring and treatment during or after remediation. During remedial design, Settling Defendants shall submit for U.S. EPA approval, in consultation with MDNR, a proposed monitoring program for surface water. Samples shall be taken from sampling locations approved during design, with the final frequency established during design and noted in the RD/RA Workplan.

Samples shall be analyzed for the following: PCBs for each Arochlor, Total Suspended Solids and Oil and Grease. The limits presently in effect for discharge into the Detroit City Sewer system are: less than 1.0 ppb for total PCB, and less than 0.5 ppb of Arochlor 1260.

Laboratory Analysis: Laboratory analysis for all sampling shall be conducted in accordance with the approved Quality Assurance Project Plan (QAPP).

V. SCOPE

The RD/RA Work shall consist of four tasks. Each task shall be completed in accordance with the schedules set forth in Section VI of this SOW.

TASK I: WORK PLAN DEVELOPMENT

- A. Pre-design Work Plan, including Sampling and Analysis Plan (SAP)
- B. Quality Assurance Project Plan (QAPP)
- C. Site Safety Plan for Pre-design activities
- D. Plan for Complying with ARARs
- E. Permit Requirement Plan (PRP)

TASK II: REMEDIAL DESIGN

- A. Design Plans and Specifications
- B. Operation & Maintenance Plan
- C. Cost Estimate
- D. Remedial Action Project Schedule
- E. Site Safety Plan for RD/RA
- F. Design Phases
- G. Community Relations Support ++EP++

ATT 1-13

TASK III: REMEDIAL ACTION IMPLEMENTATION

- A. Responsibility and Authority
- B. Construction Quality Assurance Personnel Qualifications
- C. Inspection Activities
- D. Sampling Requirements
- E. Documentation

TASK IV: REPORTS

- A. Progress Reports - Monthly during RD/RA - Semiannually during O&M
- B. Notification of Completion of Remedial Action Report certified by a professional engineer registered in the State of Michigan
- C. Notification of Failure to Meet Cleanup Standards or Performance Standards and Submission of Supplemental Remedial Action Plan.

TASK V: AGENCY WORK

- A. Perimeter Air Monitoring
- B. Access Agreements & Deed Restrictions

TASK I - WORK PLAN DEVELOPMENT

Within 60 calendar days of the lodging date of the Consent Decree, the Settling Defendants shall submit a work plan detailing the following activities, and describing in detail the following plans to U.S. EPA for review and approval. In addition, the Work Plan shall be submitted to all other Parties named in the Consent Decree.

A. Sampling Plan

The Settling Defendants shall develop a sampling and analysis plan (SAP) for conducting any required predesign sampling and analysis activities and for implementing the remedial action field activities. The sampling and analysis to be conducted during the remedial action will be designed to: (1) verify the concentration of PCBs in the material so that it can be staged for Low Temperature Thermal Desorption or on-site containment without treatment; and, (2) to determine if the material to be placed into the on-site containment cell is a RCRA TCLP characteristic waste. The SAP will also include specifications for sampling and analysis of sewer line sediments. The SAP will include specifications for sampling and analysis that will be conducted during and after the implementation of the Remedial Action.

B. Quality Assurance and Quality Control

The Settling Defendants shall develop a site-specific Quality Assurance Project Plan (QAPP), covering all phases of future site work, except the Sewer Line Assessment which may be addressed independently, based upon the Consent Decree and guidance provided by U.S. EPA. ++EP++

ATT 1-14

At a minimum, the QAPP shall include:

- * Project description
- * Project organization
- * Project responsibilities
- * Sampling and custody procedures
- * Calibration procedures
- * Quality assurance objectives
- * Analytical procedures
- * Data analysis and reporting
- * Internal QC checks
- * Performance and system audits
- * Preventive maintenance
- * Method specific procedures for assessing data precision, accuracy and completeness
- * Corrective actions
- * QA reports

The Settling Defendants shall attend a pre-QAPP meeting with U.S. EPA and MDNR representatives. The Settling Defendants shall submit a draft QAPP to U.S. EPA for review with the Work Plan to cover predesign sampling and analysis. In addition, the Settling Defendants shall submit drafts of Construction and Operation and Maintenance QAPPs to U.S. EPA for review with the intermediate (60%) design document package. Settling Defendants shall incorporate required corrections in the final Construction and Operation and Maintenance QAPPs, to be submitted with the (95%) or prefinal design package. Document review shall be governed by Paragraph IX of the Consent Decree.

C. Site Safety Plan for Predesign Activities

The Settling Defendants shall develop a site-specific safety plan which is designed to protect on-site personnel and area residents from physical, chemical and all other hazards posed by the predesign sampling activities. The safety plan shall develop the performance levels and criteria necessary to address the following areas:

- * General requirements
- * Personnel
- * Levels of protection
- * Safe work practices and safe guards
- * Medical surveillance
- * Personal and Environmental air monitoring
- * Personal protective equipment
- * Personal hygiene ++EP++

ATT 1-15

- * Decontamination - personnel and equipment
- * Site work zones
- * Contaminant control
- * Contingency and emergency planning
- * Logs, reports and record keeping

The safety plan shall follow U.S. EPA guidance and all OSHA requirements as outlined in 29 C.F.R. 1910 (51 FR 45654).

D. Compliance With ARARs Report

Settling Defendants shall submit, as part of the RD/RA Work Plan, a plan to comply with each of the ARARs identified in the ROD and this SOW.

E. Permit Requirement Plan

Settling Defendants shall submit, as part of the RD/RA Work Plan, a plan for the satisfaction of all appropriate Federal and State authorities. Settling Defendants shall submit all necessary information to allow technical review by the appropriate authorities to assure compliance with all applicable or relevant and appropriate Federal and State requirements (NOTE: Michigan's Act 348 is administered by the Wayne County Air Pollution Control Division for discharges in the Detroit Area).

TASK II - REMEDIAL DESIGN

The Settling Defendants shall prepare and submit for U.S. EPA review and approval, in consultation with MDNR, final construction plans and specifications for the Remedial Design to accomplish the recommended remedial actions as defined in the ROD, Consent Decree, this SOW, and the approved RD/RA Work plan. The plans and specifications shall meet the objectives, cleanup levels and performance standards discussed in this SOW and the ROD.

A. Design Plans and Specifications

The Settling Defendants shall develop clear and comprehensive design plans and specifications which include but are not limited to the following:

1. Discussion of the design strategy and the design basis, including;
 - a. Compliance with all applicable or relevant environmental and public health standards; and
 - b. Minimization of environmental and public impacts. ++EP++

ATT 1-16

2. Discussion of the technical factors of importance including:
 - a. Use of currently accepted environmental control measures and technology;
 - b. The constructability of the design; and
 - c. Use of currently acceptable construction practices and techniques.
3. Description of all assumptions made and detailed justification of these assumptions;
4. Discussion of all the possible sources of error and possible operation and maintenance problems;
5. Detailed drawings of the proposed design, including;
 - a. Qualitative flow sheets; and
 - b. Quantitative flow sheets, if needed.
6. Tables listing equipment and specifications;
7. Tables giving material and energy balances;
8. Appendices including;
 - a. Sample calculations (one example presented and explained clearly for each type of significant or unique design calculations);
 - b. Derivation of equations essential to understanding the report; and
 - c. Results of laboratory or field tests.

B. Operation and Maintenance Plan

The Settling Defendants shall develop and submit for approval by U.S. EPA in consultation with MDNR an Operation and Maintenance (O&M) Plan to ensure the safe and effective implementation of this remedy. The basic elements of the Plan shall include:

1. Normal Operation and Maintenance
 - Describe tasks for operation including startup and shut down procedures
 - Describe tasks for routine maintenance
 - Describe optimum treatment conditions
 - Present schedule for each O&M task ++EP++

ATT 1-17

2. Potential Operating Problems

- Describe potential sources of problems or failure
- Present common remedies or alternatives
- Describe information sources

3. Routine Monitoring and Testing

- Present description of monitoring tasks detailed in the Sampling Plan
- Present required Laboratory testing detailed in the Sampling Plan

- Present required QA/QC to ensure proper system operation
 - Discuss interpretation of laboratory results and process monitoring
 - Maintain daily operating logs and maintenance records
4. Long Term Operation and Maintenance
- Present tasks necessary to identify system repairs and establish preventative maintenance schedule
 - Describe monitoring and testing results necessary for containment cell repair or other work to maintain the performance standards (including groundwater monitoring plan, if determined to be necessary by U.S. EPA in consultation with MDNR)
 - Describe equipment replacement contingencies
 - Maintain daily operating logs, periodic inspection logs and maintenance records
 - Describe responses to problems identified at inspections
 - Retain all laboratory data and testing results
 - Present mechanism for reporting emergencies
 - Schedule reports to Agencies.

As part of the O&M Plan, the Settling Defendants shall establish a monitoring network in order to assess the compliance of the remedial activities and to assess whether new or further corrective measures need to be taken at the site. This monitoring network shall include groundwater, if determined to be necessary by U.S. EPA in consultation with MDNR. The Settling Defendants shall submit the sampling plan with the 60% design package. The parameters for analysis of groundwater samples, if determined to be necessary by U.S. EPA in consultation with MDNR, shall be based on the results of the predesign groundwater sampling and analysis.

The Settling Defendants shall develop an initial draft O&M Plan during the Remedial Design Phase. To ensure correlation with all design activities the initial draft O&M Plan shall be submitted with the 60% intermediate design package. The Settling Defendants shall submit the final O&M plan with the prefinal (95%) and final (100%) design documents for Agency review and approval. If U.S. EPA, in consultation with MDNR, determines that some modification of the approved O&M plan is necessary following field verification to be conducted after construction of the treatment system is complete, Settling Defendants shall modify the O&M plan accordingly. ++EP++

ATT 1-18

C. Cost Estimates

The Settling Defendants shall develop cost estimates for the purpose

of assuring that the settling defendants have the financial resources necessary to construct and implement the Remedial Action. The cost estimates developed in the FS and Proposed Plan shall be refined to reflect the more detailed/accurate design plans and specifications being developed. The cost estimate shall include both capital and operation and maintenance costs. An Initial Cost Estimate shall be submitted simultaneously with the Prefinal Design submission and the Final Cost Estimate with the Final Design Document.

D. Remedial Action Project Schedule

The Settling Defendants shall develop a Project Schedule for construction and implementation of the Remedial Actions which identifies timing for initiation and completion of all critical path tasks. Settling Defendants shall specifically identify dates for completion of the project and Major Milestones. An Initial Project Schedule shall be submitted simultaneously with the Prefinal Design Document submission and the Final Project Schedule with the Final Design Document.

E. Site Safety Plan for RD/RA

The Settling Defendants shall develop a site-specific safety plan which is designed to protect on-site personnel and area residents from physical, chemical and all other hazards posed by this remedial action. The safety plan shall develop the performance levels and criteria necessary to address the following areas:

1. General requirements
2. Personnel
3. Levels of protection
4. Safe work practices and safe guards
5. Medical surveillance
6. Personal safety monitoring
7. Ambient Air Monitoring
8. Personal protective equipment
9. Personal hygiene
10. Decontamination - personnel and equipment
11. Site work zones
12. Contaminant control
13. Contingency and emergency planning
14. Logs, reports and record keeping ++EP++

ATT 1-19

The safety plan shall follow U.S. EPA guidance and all OSHA requirements as outlined in 29 C.F.R. 1910 (51 FR 45654). The Settling Defendants shall submit a draft safety plan for Agency review with the

intermediate (60%) design package. The Settling Defendants shall incorporate all required corrections in the final safety plan submitted with the 95% design package. Document review shall be in accordance with Section XII of the Consent Decree, and dispute resolution shall be governed by Section XX of the Consent Decree.

F. Design Phases

Settling Defendants shall provide monthly status reports to U.S. EPA and the MDNR and shall meet with U.S. EPA and the MDNR to discuss remedial design issues at critical design phases as requested by U.S. EPA. The Settling Defendants shall include the phases outlined below in the design of the Remedial Action:

1. Preliminary Design

The Settling Defendants shall submit the preliminary design when the Additional Studies have been completed (i.e., when the design effort is 30% complete). This submittal shall include, without limitation, all data collected during the sewer line assessment and a summary of the results of all such studies. At this stage, the Settling Defendants shall have field verified the existing conditions of the Carter Site. Settling Defendants shall outline and analyze all technical requirements in the preliminary design to permit U.S. EPA, in consultation with MDNR, to determine if implementation of the final design will provide an operable and usable Remedial Action. Settling Defendants shall provide supporting data and documentation with the design documents defining the functional aspects of the program. The Settling Defendants' preliminary construction drawings shall be clear and precise. The scope of the technical specifications shall be outlined in a manner reflecting the final specifications. With their preliminary submission the Settling Defendants shall include design calculations reflecting the same percentage of completion as the designs they support. Document review shall be in accordance with Section XII of the Consent Decree, and dispute resolution shall be governed by Section XX of the Consent Decree.

2. Correlating plans and specifications

Settling Defendants shall ensure that drawings correlate with technical specifications. Before submitting the project specifications, the Settling Defendants shall:

- a. Coordinate and cross-check the specifications and drawings; and
- b. Complete the proofing of the edited specifications and the cross-checking of all drawings and specifications.

These activities shall be completed prior to the 95% prefinal submittal to the Agency. ++EP++

ATT 1-20

3. Equipment start-up and operator training

The Settling Defendants, in association with the selected treatment vendor, shall prepare, and include in the technical specifications governing treatment systems, contractor requirements for providing: (a) appropriate service visits by experienced personnel to supervise the installation, adjustment, start-up and operation of the treatment systems; and (b) training covering appropriate operational procedures once the start-up has been successfully accomplished.

4. Additional studies

The U.S. EPA, in consultation with the MDNR, may require Settling Defendants to perform additional studies to supplement the available technical data. The Settling Defendants shall furnish all equipment and personnel necessary to complete any additional work needed. Any dispute shall be governed by Section XX of the Consent Decree.

5. Intermediate Design

The Settling Defendants shall submit an intermediate design at 60% completion of the project. The intermediate design submittal, shall include, but not be limited to: initial drafts of the Construction and O&M QAPPs, initial draft O&M plan and initial draft Site Safety and Contingency Plan for remedial activities and shall be a continuation and expansion of the preliminary design. Any value engineering proposals must be identified and evaluated during this review. Document review shall be in accordance with Section XII of the Consent Decree, and dispute resolutions shall be governed by Section XX of the Consent Decree.

6. Prefinal and Final Design

The Settling Defendants shall submit the Prefinal/Final design documents in two parts. The first submission shall be at 95% completion of design (i.e., prefinal). After U.S. EPA approval of the prefinal submission, the Settling Defendants shall execute any revisions requested by U.S. EPA and submit the complete final documents with reproducible drawings and specifications.

The Prefinal Design submittal shall include, but not be limited to, the Design Plans and Specifications, final Operation and Maintenance Plan, Capital and Operating and Maintenance Cost Estimate, Project Schedule, Quality Assurance Project Plan and final Specifications for the Site Safety and Contingency Plan for remedial activities.

The Final Design submittal shall consist of the Final Design Plans and Specifications (100% complete), the Settling Defendants' Final Construction Cost Estimate, the Final Operation and Maintenance Plan, Final Quality Assurance Plan, Final Project Schedule and Final Site Safety and Contingency Plan specifications. The quality of the design

documents shall be such that the Settling Defendants would be able to include them in a bid package and invite contractors to submit bids for the construction project. Document review shall be in accordance with Section XII of the Consent Decree, and dispute resolution shall be governed by Section XX of the Consent Decree. ++EP++

ATT 1-21

All design packages submitted by the Settling Defendants shall be in accordance with CERCLA procedures on compliance with other environmental laws. Refer to "CERCLA Compliance with Other Environmental Status," Appendix to Preamble of the National Oil and Hazardous Substances Pollution Contingency Plan, Final Rule (50 FR 2892.6), November 20, 1985, for additional information. All applicable or relevant and appropriate requirements identified in the ROD including the substantive provisions of Michigan Act 307 shall be analyzed and incorporated into the design.

The following shall be identified and included in the intermediate, prefinal and final design submittals: (1) the authority(ies) responsible for technical review; (2) construction/operating approvals required; (3) time required by the appropriate agency(ies) to review the submittal(s); (4) monitoring and/or compliance testing requirements; and (5) actual agency regulations governing applications, exemptions, variances, etc.

The Settling Defendants shall obtain, complete, and provide all required technical information to the appropriate responsible authority in a timely fashion. Copies of all correspondence from appropriate responsible agencies which either describe review requirements or indicate that no review is necessary, shall be furnished to the U.S. EPA and MDNR.

G. Community Relations Support

A community relations program will be implemented by the U.S. EPA in consultation with the MDNR. The Settling Defendants shall cooperate with the U.S. EPA and the MDNR by preparing or disseminating information to the public as requested by U.S. EPA to explain activities at or concerning the Carter Site.

TASK III: REMEDIAL ACTION IMPLEMENTATION

Within 30 days of approval of the final design submittal by U.S. EPA, in consultation with MDNR, the Settling Defendants shall develop a construction quality assurance (CQA) plan to ensure, with a reasonable degree of certainty, that a completed Remedial Action meets or exceeds all design criteria, plans and specifications. The CQA plan is a facility specific document which must be submitted to the Agency for

approval prior to the start of the construction. At a minimum, the CQA plan should include the elements summarized below. Upon U.S. EPA approval of the CQA Plan, the Settling Defendants shall construct and implement the Remedial Actions in accordance with the approved design, Remedial Action Project Schedule and the CQA plan. The Settling Defendants shall also implement the elements of the approved operation and maintenance plan. ++EP++

ATT 1-22

A. Responsibility and Authority

The identity, responsibility and authority of all organizations including, but not limited to, the Project Coordinator, Remedial Design contractor and Remedial Action Contractor, Independent Quality Assurance Team, and key personnel involved in the implementation of the remedial action shall be described fully in the CQA plan. The Settling Defendants shall identify a CQA officer and the necessary supporting inspection staff and the name, qualifications, duties, responsibilities, and authorities of each person assigned a quality control function.

B. Construction Quality Assurance Personnel Qualifications

The qualifications of the CQA officer and supporting inspection personnel shall be presented in the CQA plan to demonstrate that they possess the training and experience necessary to fulfill their identified responsibilities. Prior to initiation of any construction activities, the Settling Defendants will submit the name and qualifications of the Independent Quality Assurance Team (IQAT) for approval by EPA, in consultation with the State. The IQAT is used to provide confidence to the Settling Defendants that the selected remedy is constructed to meet project requirements. The IQAT implements the Construction Quality Assurance Plan by selectively testing and inspecting the work of the Remedial Action contractor. The IQAT is required to be "independent" and autonomous from the Remedial Action contractor and may come from within the ranks of any Settling Defendants' staff, the Remedial Design contractor organization, or through a separate contractual relationship with a private consulting entity. Approval will be based on professional and ethical reputation, previous experience in the type of quality assurance activities to be implemented, and demonstrated capability to perform the required activities. In addition, EPA approval will be based on the requirement for independence between the IQAT and the Remedial Action contractor. The submitted information about the IQAT contractor will include a

written statement of qualifications in sufficient detail to allow EPA, in consultation with MDNR, to make a full and timely evaluation of the contractor's qualifications and facilities.

C. Inspection Activities

In the CQA plan, Settling Defendants shall summarize all observations and tests that will be used to monitor the construction and/or installation of the components of the Remedial Actions. The CQA Plan shall identify milestone inspection dates requiring EPA's and/or MDNR's participation. The CQA plan shall include the scope and frequency of each type of inspection. The CQA plan shall also include Control Testing procedures for each specific test. This includes information which authenticates that personnel and laboratories performing the tests are qualified and the equipment and procedures to be used complies with applicable standards. Inspections shall verify compliance with environmental requirements and include, but not be limited to, air quality and emissions monitoring records, waste disposal records (e.g., RCRA transportation manifests), etc. The inspection shall also ensure compliance with all health and safety procedures. In addition to oversight inspections, the Settling Defendants shall conduct the following activities: ++EP++

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1. Preconstruction inspection and meeting

The Settling Defendants shall conduct a preconstruction inspection and meeting to:

- a. Review methods for documenting and reporting inspection data;
- b. Review methods for distributing and storing documents and reports;
- c. Review work area security and safety protocol;
- d. Discuss any appropriate modifications of the construction quality assurance plan to ensure that site-specific considerations are addressed; and
- e. Conduct a facility walk-around to verify that the design criteria, plans, and specifications are understood and to review material and equipment storage locations.

The preconstruction inspection and meeting shall be documented by a person designated by the Settling Defendants and minutes shall be transmitted to all parties.

2. Prefinal inspection by U.S. EPA and MDNR

Upon substantial project completion (i.e., when the project is substantially complete without major deficiencies), Settling Defendants shall notify EPA and MDNR for the purposes of conducting a prefinal

inspection. The prefinal inspection shall consist of a walk-through inspection of the entire project facility. The inspection is to determine whether the project is complete and consistent with the contract documents and the EPA approved Remedial Action. Any outstanding construction items discovered during the inspection shall be identified and noted. The prefinal inspection report shall outline the outstanding construction items, actions required to resolve items, completion date for these items, and date for final inspection.

3. Final inspection by U.S. EPA and MDNR

Upon completion of any outstanding construction items, the Settling Defendants shall notify EPA and MDNR for the purposes of conducting a final inspection. The final inspection shall consist of a walk-through inspection of the project facility. The inspection of the project facility shall include all areas that were remediated as part of this action on and around the Site and the containment cell and all associated features. The prefinal inspection report will be used as a checklist with the final inspection focusing on the outstanding construction items identified in the prefinal inspection. Settling Defendants shall confirm that outstanding items have been resolved.

D. Sampling Requirements

Settling Defendants shall present in the CQA Plan all sampling activities, sample size, sample locations, frequency of testing, acceptance and rejection criteria, and plans for correcting problems as addressed in the project specifications. ++EP++

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E. Documentation

In the CQA Plan, Settling Defendants shall describe in detail all reporting requirements for CQA activities. The procedures for scheduling and managing submittals, including those of subcontractors, off-site fabricators, suppliers, and purchasing agents, shall be a part of the plan. Settling Defendants shall include such items as daily summary reports, inspection data sheets, problem identification and corrective measures reports, design acceptance reports, and final documentation. Provisions for the final storage of all records shall be presented in the CQA plan.

TASK IV: REPORTS AND SUBMISSIONS

The Settling Defendants shall prepare plans, specifications, and reports as set forth in Task I through Task III to document the design, construction, operation, maintenance, and monitoring of the Remedial Action. The documentation shall include, but not be limited to the following:

A. Progress Reports

The Settling Defendants shall at a minimum provide the EPA and MDNR with signed, monthly progress reports during the design, construction, operation, maintenance, and monitoring of the Remedial Action. The documentation shall include, but not be limited to the following:

A. Progress Reports

The Settling Defendants shall at a minimum provide the EPA and MDNR with signed, monthly progress reports during the design, construction and implementation phases, and semi-annual progress reports after site remediation is complete for operation and maintenance activities. All progress reports shall contain:

1. A description and estimate of the percentage of the RD/RA completed;
2. Summaries of all findings;
3. Summaries of all changes made in the RD/RA during the reporting period;
4. Summaries of all contracts with representative of the local community, public interest groups or State government during the reporting period;
5. Summaries of all problems or potential problems encountered during the reporting period;
6. All actions being taken to rectify problems;
7. Summaries of actions taken to achieve and maintain Cleanup Levels and Performance Standards; ++EP++

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8. Changes in personnel during the reporting period;
9. Projected work for the next reporting period; and
10. Copies of daily reports, inspection reports, laboratory/monitoring data, etc.

B. RD/RA Project Plan Draft Submittals

1. The Settling Defendants shall submit to U.S. EPA and MDNR a draft RD/RA Work Plan as outlined in Task I A-F in accordance with the schedule in Section VI of this SOW;
2. The Settling Defendants shall submit to U.S. EPA and MDNR draft construction plans and specifications, design reports, cost estimates, schedules, operation and maintenance plans, Health and Safety Plan, and study reports as outlined in Task II in accordance with the schedule in Section VI of this SOW; and,
3. The Settling Defendants shall submit to U.S. EPA and MDNR a draft construction Quality Assurance Program Plan and Documentation as outlined in Task III in accordance with the schedule in Section VI of

this SOW.

C. RD/RA Project Plan Final Submittals

After U.S. EPA and MDNR review and comment of draft submissions, the Settling Defendants shall finalize the RD/RA Work Plan, construction plans and specifications, design reports, cost estimates, project schedule, operation and maintenance plan, health and safety plan, study reports, construction quality assurance program plan/documentation and the Remedial Action Implementation Report. Settling Defendants shall incorporate comments received on draft submissions and submit finalized documents to U.S. EPA for approval.

D. Notification of Completion of Remedial Action

After completion of the work outlined in this SOW, the Settling Defendants shall submit a Remedial Action Implementation Report to U.S. EPA and MDNR. The report shall document that the project is consistent with the design specifications, and that Remedial Action has been completed. The report shall include, but not be limited to, the following elements:

- a. Synopsis of the Remedial Action and certification of the design and construction;
- b. Explanation of any modifications to the plans and why these were necessary for the project (including as-built drawings and specifications);
- c. Listing of the criteria, established before the Remedial Action was initiated, for judging the functioning of the Remedial Action and also explaining any modification to these criteria; ++EP++

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- d. Results of facility monitoring, indicating that the Remedial Action has and will meet or exceed the performance criteria;
- e. Explanation of the operation and maintenance (including monitoring) to be undertaken at the facility; and,
- f. Data demonstrating that the Cleanup Levels have been achieved and will continue to be achieved.

TASK V: AGENCY WORK

A. Perimeter Air Monitoring

During implementation of the selected remedial alternative at the Site, ambient air monitoring shall be conducted around the perimeter of the Site to determine the extent of any risk resulting from air emissions from operation of the LTTD equipment, including, but not limited to, the air pollution control equipment and all appurtenant equipment, as well as emission resulting from excavation, consolidation and handling of contaminated soil and debris. The ambient air

monitoring program developed for the Site shall consider such factors as contaminants of concern and their volatilities, design specifications of the air pollution control equipment, predominant wind speeds and directions, and locations of potential downwind receptors during selection of proposed monitoring locations.

The objectives of the air monitoring program are to verify that fugitive dust emissions are in compliance with the National Ambient Air Quality Standard for particulate matter with aerodynamic diameter equal to or less than 10 microns. The current standard for particulate matter is 150 micrograms per cubic meter (24 hour average not expected to be exceeded on more than one day per year) and 50 micrograms per cubic meter (annual arithmetic mean, not to be exceeded).

B. Access Agreements Necessary to Commence Remedial Action

All site access agreements required to implement the remedial action shall be obtained prior to the initiation of remedial action or additional studies. Site access shall extend for the duration of the cleanup and include allowances for all operation and maintenance considerations in accordance with Paragraph X of the Consent Decree.

U.S. EPA will obtain deed and access restrictions, easements, land-use limitations, or other enforceable instruments needed to restrict private property use in order to minimize the prospect of: 1) interference with the conduct and completion of the Defendants' Work to be performed at the Site under the Consent Decree; 2) compromise of the integrity of the on-Site cap; 3) on-Site construction that would significantly increase exposure to any hazardous substance remaining on-Site; and 4) interference with operation and maintenance of treatment and monitoring systems required by the Consent Decree.

++EP++

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VI. SCHEDULE OF DELIVERABLES AND MAJOR MILESTONES

Submit Draft RD/RA Work Plan (Task I) - sixty (60) calendar days after lodging of the Consent Decree. All revisions shall be submitted in accordance with paragraph VI (13)(c) of the Consent Decree.

Submit Revised RD/RA Work Plan (Task I) - thirty (30) calendar days after receipt of U.S. EPA comments on draft RD/RA Work Plan.

Complete and submit preliminary (30%) design plans and specifications (Task II) -sixty (60) calendar days after receipt of written approval of the Work Plan.

Complete and submit intermediate (60%) design plans and specifications (Task II) - sixty (60) calendar days after receipt of

approval or comment on the preliminary design plans and specifications or sixty (60) calendar days after entry of the Consent Decree, whichever is later.

Complete and submit prefinal (95%) design plans and specifications (Task II) -sixty (60) calendar days after receipt of approval or comment on the intermediate design plans and specifications.

Complete and submit final design plans and specifications (Task II) - sixty (60) calendar days after receipt of comment on the prefinal design plans and specifications. If the prefinal design plans and specifications are approvable without comment, they shall function as the final design.

Complete and submit Construction Quality Assurance plan (Task III) - thirty (30) calendar days after receipt of approval of final design plans and specifications.

Begin implementation of remedial action (Task III) - in accordance with the approved Remedial Action Project Schedule. ++EP++

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FIGURE 1&2

Remedial Action - General Site Layout

Containment Structure

FIGURES OMITTED ++EP++

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Figure 3

+++III Carter Industrials Site, Detroit III+++

Record of decision omitted ++EP+

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